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No. 954

In the Supreme Court of the United States

OCTOBER TERM, 1946

UNITED STATES OF AMERICA, APPELLANT

v.

JAMES C. PETRILLO

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

BRIEF FOR THE UNITED STATES

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the District Court (R. 3), is reported in 68 F. Supp. 845.

JURISDICTION

The judgment of the court below was entered on December 2, 1946 (R. 9). The notice of appeal was filed on December 26, 1946 (R. 9). The jurisdiction of this Court is invoked under the Criminal Appeals Act, as amended May 9, 1942, 56 Stat. 271, 18 U. S. C., Supp. V, § 682.

QUESTIONS PRESENTED

Section 506 (a) (1) of the Federal Communications Act, as amended April 16, 1946, makes it unlawful by any means willfully to coerce a radio licensee "to employ or agree to employ, in connection with the conduct of the broadcasting business of such licensee, any person or persons in excess of the number of employees needed by such licensee to perform actual services". The appellee was charged, in a criminal information, with willfully coercing a licensee to employ persons not needed to perform actual services, through the following means: by directing employees of the licensee to discontinue their employment, by directing said employees and other persons not to accept employment by said licensee, and by placing a person as a picket in front of the place of business of said licensee.

The questions presented are:[1]

(1) Whether, insofar as the Act prohibits appellee from directing and causing other persons to discontinue or not to accept employment, it violates the Thirteenth or Fifth Amendments to the Constitution;

(2) Whether, insofar as the Act prohibits appellee from placing a picket in front of a licensee's place of business, it violates the First Amendment to the Constitution;

(3) Whether Section 506 contains an arbitrary

[1] Subsidiary matters discussed in Points VII and VIII of this brief relate to the scope of the issues on which this Court need pass.

classification in violation of the Fifth Amendment because it extends only to persons who coerce radio licensees and not to the licensees themselves, because it does not extend to other industries, or because it applies to all broadcasting employees and not merely to musicians;

(4) Whether Section 506 (a) (1) violates the Fifth Amendment because of indefiniteness.

STATUTE INVOLVED

The statute involved, the Lea Act, (Act of April 16, 1946, Pub. No. 344, 79th Cong., 2d Sess., 47 U. S. C. A. 506), entitled, an Act "To amend title V of the Communications Act of 1934 [47 U. S. C. 51, *et seq.*] so as to prohibit certain coercive practices affecting radio broadcasting.", is set forth in full in the Appendix, *infra*, pp. 153–156. The provisions mainly pertinent here provide as follows:

> COERCIVE PRACTICES AFFECTING BROADCASTING
>
> SEC. 506. (a) It shall be unlawful, by the use or express or implied threat of the use of force, violence, intimidation, or duress, or by the use of express or implied threat of the use of other means, to coerce, compel or constrain or attempt to coerce, compel, or constrain a licensee—
>
> (1) to employ or agree to employ, in connection with the conduct of the broadcasting business of such licensee, any person or persons in excess of the number of employees needed by such licensee to perform actual services;

(c) The provisions of subsection (a) * * * of this section shall not be held to make unlawful the enforcement or attempted enforcement, by means lawfully employed, of any contract right heretofore or hereafter existing or of any legal obligation heretofore or hereafter incurred or assumed.

(d) Whoever willfully violates any provision of subsection (a) or (b) of this section shall, upon conviction thereof, be punished by imprisonment for not more than one year or by a fine of not more than $1,000, or both.

(e) As used in this section the term "licensee" includes the owner or owners, and the person or persons having control or management, of the radio station in respect of which a station license was granted.

House Committee Report No. 1508, 79th Cong., 2d Sess., is also attached as an Appendix (pp. 157–172).[2]

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[2] The bill which originally passed the Senate prohibited only interference with non-commercial educational broadcasts. S. 63, 79th Cong., 1st Sess.; S. Rep. No. 9, 79th Cong., 1st Sess.; 91 Cong. Rec. 698. After hearings the House Committee reported a revised bill (H. R. 5117, 79th Cong., 2d Sess.) substantially in the form finally enacted; this bill was passed (92 Cong. Rec. 1566) and then sent to conference (*id.*, 1710, 2174). Only two minor changes were made by the Conference Committee (H. Rep. 1824, 79th Cong., 2d Sess.). The House Committee Report is therefore the only committee report which discusses the provisions of the present Act. The Act was passed by a vote of 186–16 in the House (92 Cong. Rec. 2823), and 47–3 in the Senate (*id.*, at 3255).

STATEMENT

On June 13, 1946 a criminal information was filed against the appellee charging a violation of Section 506 of the Federal Communications Act, as amended. The information reads as follows (R. 1-2):

> That at all times mentioned herein the Drovers Journal Publishing Company, Inc. (hereinafter referred to as the Licensee) was an Illinois corporation and the owner and operator of a licensed radio broadcasting station known as Radio Station WAAF, located in Chicago, Illinois.
>
> That for several years last past up to, on or about, May 28, 1946, in connection with the operation of its radio broadcasting facilities, the licensee employed certain persons who were sufficient and adequate in number to perform all the actual services needed by said licensee in connection with the conduct of its broadcasting business.
>
> That notwithstanding the premises aforesaid, one James C. Petrillo, President of the Chicago Federation of Musicians, on or about May 28, 1946, at Chicago, Illinois, wilfully, by the use of force, intimidation, duress and by the use of other means, did attempt to coerce, compel and constrain said licensee to employ and agree to employ, in connection with the conduct of its radio broadcasting business, three additional persons not needed by said licensee to perform actual services, in the following manner, o wit:

(1) By directing and causing three musicians, members of the Chicago Federation of Musicians, theretofore employed by the said licensee in connection with the conduct of its broadcasting business, to discontinue their employment with said licensee;

(2) By directing and causing said three employees and other persons, members of the Chicago Federation of Musicians, not to accept employment by said licensee; and,

(3) By placing and causing to be placed a person as a picket in front of the place of business of said licensee.

Appellee moved to dismiss the information on the ground that the statute on which it is based contravenes the First, Fifth, Tenth and Thirteenth Amendments to the United States Constitution (R. 2-3). On December 2, 1946 the District Court sustained the motion to dismiss (R. 9). The District Court held (R. 8):

> * * * that the statute here involved in the application here sought to be made violates the Fifth Amendment because of indefiniteness and uncertainty in the definition of a criminal offense; violates the First Amendment by its restriction upon freedom of speech by peaceful picketing; violates the Fifth and Thirteenth Amendments by its restriction upon employment of labor; and violates the Fifth Amendment by an arbitrary classification as be-

tween employers and employees and as to other communication industries.

The Government has appealed directly to this Court under the Criminal Appeals Act, inasmuch as the decision below was based on the unconstitutionality of a statute (R. 9–10). On March 3, 1947, this Court noted probable jurisdiction (R. 13).

SUMMARY OF ARGUMENT

I

The evil to which the Lea Act was addressed is a special manifestation of the general problem of monopolies and restraint of trade—the exercise of monopoly power by a labor organization in a manner which interfered with the effective use of the facilities for radio broadcasting. The Lea Act is designed partially to remove obstacles to the enforcement of the antitrust laws which Congress itself had created in other legislation. The types of exorbitant demands at which the statute was directed impair the financial resources of radio licensees and thereby harmfully affect the radio service available to the public, contrary to the purposes of the Federal Communications Act. Cf. *National Broadcasting Co.* v. *United States*, 319 U. S. 190, 216, 217. The Lea Act amends the Communications Act in order to further the attainment of its legitimate objectives under the Commerce Clause.

II

Congress has authority under the Commerce Clause to prohibit restraining or monopolistic practices affecting radio broadcasting, and this power extends to restraints by labor unions. This is established by the cases under the Sherman Act, all of which have assumed the constitutional power of Congress over this subject. Most recently in *Allen-Bradley Co.* v. *Local Union No. 3*, 325 U. S. 797, this Court sustained the application of the Sherman Act to coercive acts of a labor organization, including striking and peaceful picketing. The factor of employer cooperation there present, though important under the Sherman Act, was clearly regarded as not of constitutional significance. That case would seem to be controlling as to the issues presented here as to the power of Congress to prohibit strikes and picketing which restrain interstate commerce.

III

A. Inasmuch as the information charges only that appellee has sought to coerce Station WAAF by directing and causing other persons to refrain from working, appellee is in no position to urge that he is being required to work in possible contravention of the Thirteenth and Fifth Amendments. Neither of these Amendments gives constitutional sanctity to any right to order other persons not to work. Cf. *United States*

v. *United Mine Workers*, decided March 6, 1947. The Thirteenth Amendment was never meant to extend to such a situation, and the Fifth Amendment does not give greater protection to the right to interfere with the working relations of others than to the right to enter into working relations on any terms one chooses. Cf. *West Coast Hotel Co. v. Parrish*, 300 U. S. 379. Both are subject to legislative controls which are reasonably related to a legitimate Congressional objective.

B. In any event, if the case be regarded as involving a question of the right to strike, the Act would be constitutional. The right to strike, as conceded by appellee, is not absolute. That means that the legislature may limit it, so long as it not act arbitrarily or in a manner not reasonably related to a proper objective. It was not inappropriate for Congress to conclude that feather-bedding demands are incompatible with the public interest in radio broadcasting.

Appellee admits that Congress may forbid strikes for unlawful objectives, but contends that the Lea Act does not make the purpose of a strike unlawful since it is not made illegal for the licensee voluntarily to do what he cannot be coerced to do. We submit that the "unlawful objective" test formulated by the courts in labor cases at common law is not a constitutional criterion. Here there was ample basis for Congress to believe that its legitimate goal of pre-

venting coerced compliance with wasteful demands upon interstate broadcasting could not be achieved unless the Act extended to coercion through strikes, which are the normal means used by a monopolistic union to attain its objectives. This satisfies constitutional requirements.

In any event the Lea Act satisfies the "unlawful objective" test. Coercion, including striking and picketing, is not made unlawful apart from the objectives enumerated in the Act. A strike directed at inducing a licensee to accede to a demand that he hire persons he does not need is thus a strike for an unlawful purpose, and nonetheless so because it would be lawful for the licensee to hire more workers if he wished—just as the object of an extortioner is unlawful even though the victim could voluntarily agree to make the identical payment. Furthermore the precedents in this Court and at common law from which the "unlawful objective" test is derived refute appellee's argument, since in most of the cases in which the objectives of strikers have been held unlawful the employer could lawfully have granted the striker's demands.

IV

A. The Lea Act does not prohibit picketing as such but coercion. Picketing violates the Act only if and to the extent that it is coercive, and like other forms of coercive speech, to the extent

that it is coercive it is not protected by the First Amendment. It is well established that when words, whether oral or written, are used in order to coerce, the First Amendment does not protect them. This is shown by many cases under the Sherman Act and the National Labor Relations Act. Unless peaceful verbal instructions, whether set forth in pickets' placards or elsewhere, are within the reach of governmental authority, Congress will be helpless to control or regulate the coercive conduct of monopolistic unions even though such regulation is substantively within its constitutional powers.

This Court's recent decisions, beginning with *Thornhill* v. *Alabama*, are entirely consistent with these views. They have invalidated only laws which prohibited picketing generally or without regard to its coercive character; they have not suggested the invalidity of statutes which prohibit picketing only when and to the extent that it is coercive.

B. Furthermore picketing for an unlawful purpose is not protected by the First Amendment. The authorities establish that if a strike is unlawful because of its purpose, picketing for the same purpose is likewise unlawful. The *Allen-Bradley* case, which restrains peaceful picketing, is the most recent pronouncement of this Court on the subject. Clearly, it would be futile for Congress to have the power to proscribe the ends for which

strikes could be prohibited if labor organizations could accomplish the same thing, equally effectively, by picketing. This is so even though picketing may be a form of speech or of writing. An order issued by a labor leader would always be verbal, and it would not acquire greater sanctity because of being carried up and down the sidewalk on a picket's placard. Soliciting others to give aid to an unlawful course of conduct is not constitutionally protected free speech, at least where there is a "clear and present danger" that the solicitation will be successful and thus bring about the "substantive evils that Congress has a right to prevent." *Schenck* v. *United States,* 249 U. S. 47, 52. Here Congress has a right to prevent the evils at which the Lea Act is directed, and the picketing is directly and immediately—that is, clearly and presently—designed to produce those evils.

V

Section 506 does not violate the Fifth Amendment by denying the equal protection of the laws.

A. The Act does not discriminate in favor of employers because they may voluntarily do what they may not be coerced into doing. Congress may hit at abuses which have been shown to exist without going beyond to cover the entire field of possible abuse. There has been no showing that the practice of hiring unnecessary employees

has been prevalent in the broadcasting industry apart from outside coercion. Congress could reasonably assume that the employers' normal self-interest would adequately protect the public in this respect.

B. It was not improper for Congress to legislate merely for the broadcasting industry when it is not shown that other industries are similarly afflicted.

C. The Act is general legislation applying to anyone who coerces radio licensees. It is not invalid because it was enacted as a result of the activities of a particular organization. There is clearly no substance to appellee's argument that the Act contains an unconstitutional classification because it applies to all broadcasting employees and not merely to the musicians, when the evidence before Congress had shown only the musicians "guilty of any excesses."

VI.

The district court's holding that Section 506 (a) (1) is too indefinite is based upon a misconstruction of the statute. That provision makes it unlawful for anyone *"willfully"* to coerce radio licensees "to employ or agree to employ * * * persons in excess of the number of employees needed by such licensee to perform actual services." The language, context and history of this provision shows that it was not intended to

reach *bona fide* disputes as to conditions of employment, including such matters as hours of work and whether additional workers might be required to prevent employees from working too hard, but deliberate demands for payment to additional employees made in complete disregard for the employer's need and without any justification from the viewpoint of actually getting the employer's business done. The requirement that a violation be willful and the repeated Congressional references to the offense created as immoral and akin to extortion make this particularly clear. The district court was therefore wrong in holding that the number of employees needed was to be determined by the licensee. The bill was amended specifically so as to avoid that result.

There can be no question but that in the type of case Congress intended the statute to reach a defendant would know that he was forcing upon an employer more employees than were needed. The provision in Section 506 (a) (1) is at least as definite as others which have been upheld by this Court. And the requirement of willfulness prevents the statute from becoming a "trap for those who act in good faith." The Court has properly attached great significance to this factor, and in no case has it held a law indefinite when *scienter* was an element of the offense. Any question as to the specificity of the statutory

language must be resolved in the Act's favor by reason of this requirement. The fact that there may be borderline cases does not render a statute unconstitutionally indefinite, if there is a hard core of circumstances to which a statute will unquestionably apply, as to which the ordinary person would have no doubt as to its application, and if this comprises the mass of situations with which the act deals. Furthermore, since this case clearly falls within the statutory prohibition, appellee has no standing to contend that the Act is too indefinite.

VII

The issues in this case relate to the validity of the Lea Act with respect to the facts alleged in the information. This Court will not decide hypothetical constitutional controversies. There is no basis for appellee's argument that the Act must be treated as an unseverable whole and must fall if any application might be unconstitutional. The Lea Act can, without difficulty, be applied to those factual situations which validly come within it, and Congress clearly intended it to stand insofar as it possibly could. The separability clause in Section 608 of the Communications Act is applicable to Section 506 and is controlling; but even if it were thought inapplicable, the result would be the same in view of the clear cut Congressional intention.

VIII

The information must stand if any one of the three means of coercion charged states a valid offense.

ARGUMENT

I

SECTION 506 OF THE FEDERAL COMMUNICATIONS ACT WAS AN EXERCISE OF CONGRESSIONAL POWER TO PREVENT MONOPOLIES IN, AND RESTRAINTS OF, INTERSTATE COMMERCE

Essential to a critical analysis of the constitutional validity of any statute is an understanding of the problems which gave rise to its enactment. The evil to which Section 506 (a) (1) of the Federal Communications Act was addressed is merely one special manifestation of the general problem of monopolies and restraints of interstate trade which evoked the Sherman Anti-trust Act. We shall show also, in subsequent sections of this brief, that the power here exercised by Congress rests on much the same constitutional basis as the Sherman Act. In this section of the brief we shall describe the serious restraints of commerce in the field of broadcasting which Congress sought to remedy through enactment of Section 506 (a) (1).

A. *The monopoly power of the American Federation of Musicians*

That the American Federation of Musicians controls all the musicians in the United States

was admitted by its president, the appellee, at a congressional hearing held in 1943.[2] During the course of his testimony he stated (p. 44, quoted in 92 Cong. Rec. 3253, during the debates on the present Act):

> Senator TUNNELL. Mr. Petrillo, what percentage of the musicians of the country belong to your union?
>
> Mr. PETRILLO. Senator, I will say right now, that every professional musician in the United States and Canada belongs to the American Federation of Musicians.
>
> Senator TUNNELL. Every one does?
>
> Mr. PETRILLO. Yes, sir.
>
> Senator MCFARLAND. Now, is not that your unique position that you are talking about?
>
> Mr. PETRILLO. I will say yes.
>
> * * * * *

(p. 61:)

> Senator MCFARLAND. * * * the real unique position that you were in was the fact that you do control the musicians of the country. In that way you have prevented the recording of music; that is right, is it not?
>
> Mr. PETRILLO. That is right.

During the 1945 hearings eventuating in the

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[2] Hearings before Subcommittee of Senate Committee on Interstate Commerce, 78th Cong., 1st Sess., *Use of Mechanical Reproduction of Music* (unprinted) (1943 Hearings), p. 44.

present law' the Chairman of the Federal Communications Commission, was asked whether it was "true that * * * nobody could broadcast for hire except with the consent of this union? What I am getting at is, would that have the effect of recognizing the closed shop in musical broadcasting in this country?" He replied: "That is the situation that exists now."[5] And there was additional uncontradicted testimony that "the American Federation of Musicians rigorously enforces all over the country a 100-percent closed shop."[6]

The power of the American Federation of Musicians first came to the attention of Congress in 1942 when that organization, through its president, appellee, issued an order forbidding its members to play or contract for recordings or any mechanical reproduction of music. See Hearings before Subcommittee of Senate Committee on Interstate Commerce, 77th Cong., 2d Sess., pursuant to S. Res. 286, *Use of Mechanical Reproduction of Music,* pp. 1–5 (hereinafter cited as 1942 Hearings). Efforts of the Director of the Office of War Information and of the Chairman of the Federal Communications Commission to have the ban lifted proved unavailing. *Id.*, at

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[4] Hearings before House Committee, 79th Cong., 1st Sess., on S. 63 and H. R. 1648, *Interference with Broadcasting of Non-Commercial Educational Programs* (hereinafter cited as 1945 Hearings).

[5] *Id.*, at p. 13.

[6] *Id.*, at p. 67.

8, 49. The interests of these governmental agencies in the question resulted from the dependence of several hundred small independent radio stations on mechanical transcriptions, the need for the continued existence of these stations as media of communications, and the importance of recorded music to the morale of servicemen and war workers. *Id.*, at 6–7. A survey by the Federal Communications Commission at that time revealed that 76% of all radio programs included music (*id.*, at 18–20), that 42.6% of all radio time was devoted to programs including recorded music (*id.*, at 21), and that the recordings were employed much more extensively by the smaller and less prosperous stations (*id.*, at 23–35).

When the ban on recordings and electrical transcriptions was still in effect after six months despite the efforts of the administrative officials, the Congressional Committee hearings were reopened.[1] Mr. Petrillo admitted to the Committee that he had not made any demands on the recording companies or anyone else but had merely ordered that they be closed down.[2] At the instance of the Committee, Petrillo subsequently announced his demands that the recording companies pay a specified sum per record to the union, for an Employ[illegible] Fund, and the com-

[1] 1943 Hearings, *supra*.
[2] *Id.*, at 49.

panies were forced to accept it.[9] Subsequently the Federation disregarded orders of the National War Labor Board and of the President of the United States that the ban on recordings, except in accordance with the Union's terms, be rescinded. See 1945 Hearings, pp. 16, 78, 92 Cong. Rec. 1549.

Other types of orders issued by the appellee have forbidden musicians to appear on any television program, or any program broadcast on both frequency and standard modulation unless twice as many musicians were paid.[10] The ban on television is not part of a collective bargaining arrangement but is an outright unconditional order issued to all musicians.[11]

The evidence before Congress showed not only that the Federation of Musicians possessed a monopoly power over the musical industry but that its peculiar constitution in fact vested uncontrolled power in one man, its president. All contracts with the Union are expressly made "subject to the constitution, bylaws, and rules of the union". 1945 Hearings, at p. 68. Article I of the bylaws of the Federation, set forth at greater length in the note below and in its entirety in the Transcript of Record in No. 731, *Bartels* v.

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[9] The controversy as to recordings is described in *Electrical Transcription Manufacturers and American Federation of Musicians*, 16 War Labor Reports 369, and in 1945 Hearings, pp. 74–78.

[10] 1945 Hearings, pp. 17, 86, House Report No. 1508, 79th Cong., 2d Sess., p. 5, quoted *infra*, p. 165.

[11] 1945 Hearings, at p. 86.

Birmingham, pp. 592–593,[12] empowers the president of the Union not only to "enforce the constitution, bylaws, standing resolutions, or other laws, resolutions, or rules of the federation," but also to "annul and set aside same or any portion thereof, except such which treat with the finances of the organization and substitute therefor other and different provisions of his own making" (*Id.*, pp. 20, 68; H. Rep. 1508, 79th Cong., 2d Sess., p. 2, *infra*, p. 160). The House Committee Report stated (p. 2):

> In most cases demands of the character dealt with by this proposed legislation have been made on behalf of the American Federation of Musicians by James C. Petrillo, its president.

* * * * *

[12] "It shall be his duty and prerogative to exercise supervision over the affairs of the federation; to make decisions in cases where, in his opinion, an emergency exists; and to give effect to such decisions he is authorized and empowered to promulgate and issue executive orders, which shall be conclusive and binding upon all members and/or locals; any such order may by its terms (a) enforce the constitution, bylaws, standing resolutions, or other laws, resolutions, or rules of the federation, or (b) may annul and set aside same or any portion thereof, except such which treat with the finances of the organization and substitute therefore other and different provisions of his own making, in which case such change shall be published in the next issue of the International Musician after its promulgation; the power so to do is hereby made absolute in the president when, in his opinion such orders are necessary to conserve and safeguard the interests of the federation, the locals and/or the members; and the said power shall in like manner extend to and include cases where existing laws are inadequate or provide no methods of dealing with a situation." 1945 Hearings, p. 20.

> The federation thus composed is so organized that its membership has little control over its management or policy.

A member of the Federation, who was protesting against the appellee's ban on the broadcasting of music from the National Music Camp at Interlochen, Michigan, stated before the Congressional committee (1945 Hearings, at p. 21):

> The question is frequently asked "Why do the members of the A. F. of M. support this high-handed czar of American music?" The answer is that they are afraid of his vengeance, for he has the power to expel any member of any local without reason and without trial. No musician who is dependent upon musical performance for a livelihood can afford to incur the displeasure of boss Petrillo, for no such musician can secure employment unless he is a member of the A. F. of M. The members of the A. F. of M. enjoy about the same measure of freedom as the members of Hitler's Reich. They obey him, or else.
>
> At a faculty meeting at the Interlochen last summer the A. F. of M. members pointed out to me that if I continued to protest the Petrillo broadcast ban Petrillo would punish them for being associated with the institution. Their fear was well founded. Mr. Petrillo has punished them by his edict of January 19, forbidding them to earn their summer livelihood at the camp hereafter.

None of this testimony before the Congressional committee was contradicted. The Federation and the appellee were invited to appear but refused. 1945 Hearings, 121–122, 126. Congress was accordingly entitled to accept as true the testimony introduced at the hearing as to the Federation's activities.[13]

There is ample evidence in the Committee Report and the Congressional debates that when it passed the Lea Act, Congress was concerned with the monopolistic power of the Federation of Musicians and its president. H. Rep. No. 1508, pp. 1–2 *infra*, pp. 158–160; 92 Cong. Rec. 1544, 1547, 1549, 1555, 1556, 1557, 1558, 3253.[14]

B. *The detrimental effect of the Federation's monopoly power on interstate broadcasting*

Radio broadcasting is an interstate industry subject—and subjected—to Federal regulation under the Commerce Clause. This Court has

[13] In its briefs and arguments in the court below appellee made many self-serving statements of fact for the purpose of showing the reasonableness of his conduct and refuting the evidence presented before the Congressional committees. The place for such statements and arguments was before the Congressional committee. Congress was warranted in basing its legislation upon its understanding of the situation presented to it, particularly in view of the Federation's refusal to appear. Contrary self-serving statements by appellee as to matters of policy, which are neither found in the legislative records nor in the record of this case, and the truth of which is plainly not judicially noticeable cannot be relied upon in this Court in determining the constitutional issues here involved.

[14] References to dictatorship, dictatorial powers and tyranny, in an economic context, connote monopoly power in aggravated form.

recognized (*National Broadcasting Co.* v. *United States*, 319 U. S. 190) that the Communications Act is designed to establish a system of radio broadcasting which would "secure the maximum benefits of radio to all the people of the United States" (p. 217).

> The facilities of radio are limited and therefore precious; they cannot be left to wasteful use without detriment to the public interest. "An important element of public interest and convenience affecting the issue of a license is the ability of the licensee to render the best practicable service to the community reached by his broadcasts." *Federal Communications Comm'n* v. *Sanders Radio Station*, 309 U. S. 470, 475. [*Id.*, at 216.]

The Lea Act amends the Communications Act in order to further the attainment of its objectives.

That the practices of the Federation and the appellee have interfered with the fullest utilization of radio service is undeniable. We have already referred to the ban on television and the refusal to permit broadcasting on both standard and frequency modulation without double payment.[15] These directly interfere with new and improved methods of broadcasting:

[15] Representative Rivers stated during the debate in the House that Petrillo "has it in his power to kill once and for all frequency modulation. It is dead if Petrillo continues. He has already issued a dictate that no band in the Nation may appear on television for any purpose. If he continues, television is dead and buried." 92 Cong. Rec. 1558.

The enforcement of the latter demand illustrates the abuse at which the portion of the Act here involved was aimed. The House Committee Report (No. 1508, 79th Cong., 2d Sess., p. 5, *infra*, p. 165)

> * * * a wire from Mr. Petrillo to the networks in October 1945, as follows:
>
> "This is to advise you that after the meeting between your company and the American Federation of Musicians held in my office the matter was further discussed and we came to the final conclusion that beginning Monday, October 29, 1945, wherever musicians play for FM broadcasting and AM broadcasting simultaneously the same number of men must be employed for FM broadcasting as are employed for AM broadcasting, which means a double crew must be employed. Kindly govern yourself accordingly."

The Committee Report then proceeds:

> The absurdity of such a demand is apparent. Two orchestras required for simultaneous broadcast would be an anomaly. It is reported that 1 of the networks has a staff orchestra of 95 pieces and compliance with this order would require the employment of 190 musicians to needlessly duplicate and embarrass the work of one orchestra.

The Chairman of the Federal Communications Commission, testifying before the House Commit-

tee on Interstate and Foreign Commerce in relation to the ban of musical broadcasting by educational organizations stated. (1945 Hearings, p. 12):

> * * * this action of the American Federation of Musicians results in a severe restriction being imposed upon what may be broadcast over the air. Under the American system of broadcasting, as you know, the Government is expressly forbidden to dictate to broadcasters what shall and what shall not be broadcast. This is in order to guarantee a free radio. But more than this is necessary if radio is really to be free. We must make sure that no arbitrary restrictions are imposed by private groups concerning material which shall be broadcast. It is the Commission's constant endeavor to see that the radio industry keeps itself as free as possible of all unreasonable fetters so that radio stations are in a position to discharge their obligation of operating in the public interest. Radio's ability to fulfill this obligation is hampered fully as much when its freedom of action is imposed by a labor organization as when it is self-imposed. * * *
>
> The second evil is found in the effect of the American Federation of Musicians' action on small stations. We all are familiar with the fact that most professional talent is concentrated in the large cities. For the small station this means that it must to a great extent rely on amateur talent which it can find or develop in the

> community. Many of these communities have a good deal of latent talent that can be developed to the benefit both of the talent and the community; this is particularly true of communities which have universities located nearby. However, the action of the American Federation of Musicians prevents radio stations from using musical talent of this kind, * * *.

There were many illustrations presented to the House Committee as to the evil at which paragraph (a) (1) of the Lea Act, here involved, was directed—the forced hiring of more persons than are economically necessary or justifiable.

The Federation of Musicians established a quota system prescribing the number of musicians each radio station was required to hire. With respect to one of these demands, it was testified that a regional hearing officer of a National War Labor Board panel had found (*id.*, at 72):

> * * * * * *
>
> It is first of all clear that radio station WOV has no need for and cannot use 12 musicians. The requirement that it must hire 12 musicians at all times is thus "make-work" or "feather-bedding" rule which insures a weekly wage to a number of men who do virtually nothing to earn it except to belong to the musicians' union. * * *[16]

[16] Although the recommendation of the hearing officer was rejected by the Regional War Labor Board, the Board did not question the findings of fact. *Radio Station WOV*, 22 War Labor Reports 744.

An official of a Chattanooga broadcasting company in referring to a demand that it employ seven musicians stated that (*id.*, at 125):

> * * * We made it very clear that we needed the services of none of these men, and the union representatives were frank enough to admit this. Their position was, however, that since we used programs originating with the Columbia chain where union musicians were employed, we must pay tribute to the local union because their employment had been disturbed by the use of Columbia chain programs. They stated that they had no desire to make a War Labor Board case, but preferred to have their national organization bring pressure upon the Columbia chain with a threat of having Station WDOD deprived of Columbia chain programs.
>
> The gist of the whole situation locally is that we do not need the services of these men. They admit we do not, but they are attempting to force us to employ them in spite of the fact that they are employed at various other places in the city of Chattanooga both as musicians and in other lines of employment * * *

The quota demands of individual stations were enforced by threats to boycott the network with which the station was connected (*id.*, at 70).

> * * * When the union desired to have a station affiliated with a network hire more

> men, it notified the network that if the network continued to transmit programs to the station, a strike would take place against the network which would prevent the transmission of any programs using instrumental musicians to any of the stations on the network. In many cases, the network, faced with the alternative of depriving one station of network service, or, being unable to broadcast musical programs to all of its stations, has appealed to the station to settle its dispute with the A. F. M. * * *.

In order to force a Rochester station to hire musicians "a strike had been called depriving an entire network, and all of its hundreds of stations, of any musical services, and * * * this strike had been ended only on the withdrawal of network service from the station". 1945 Hearings, at 71. "The station employed no musicians, said that it could not get any, and didn't need any". *Ibid.*

Another illustration relates to "platter turners". "This term relates to the function of placing phonograph records and electrical transcriptions on turntables and placing the needle in the groove so that the record can be played. Such work everywhere else in the country was done by persons who were already present in the studio in connection with another function. In most cases it was done by a studio engineer, who was already in the studio in order to control the volume of the record as it was broadcast. In some

other cases it was done by announcers, who announced the name of the selection and artist in connection with placing the recording on the turntable. Stations owned and operated by networks used engineers for this purpose." *Id.*, at 80.

Although he had previously admitted to the Congressional Committee in 1943 that such a demand "is not sound" (*ibid.*), the appellee insisted that all networks must employ as platter turners only members of the American Federation of Musicians. The Union's official journal announced that "members doing this work would only do that work and nothing else and would not be permitted to play a musical instrument." *Id.*, at 81.

With respect to this demand, a witness testified (*id.*, at 82):

> Platter turning is no more a full-time job for anyone than would be the placing of paper in a typewriter as separate from stenography. It is a mere incidental amount of time, and which always has been done, and can be easily be done by the persons who are already occupied in the studio in connection with the program being broadcast. It must be remembered that the average station is on the air for about 17 hours a day for 7 days a week. During this time there is no extensive period when some type of recording will not have to be handled. Sometimes it may be a Government

appeal, sometimes a commercial spot announcement which runs only for a minute, sometimes a 15-minute recorded show.

In order to have musicians available as platter turners through all of this period, every broadcasting station would have to employ a number of shifts of platter turners, and Mr. Petrillo's figure of 2,000 "make work" jobs for such activity is, therefore, a conservative one. To employ high-priced union musicians to sit idle except for the occasional placing of a record upon a turntable is wasteful and uneconomic for all broadcasting stations and would deteriorate the public service rendered by broadcasting. For the smaller stations, however, much forced hiring would be completely ruinous.

The Committee inquired as to whether other unions engaged in the same type of practice. The witness (a representative of the broadcasters and probably not well qualified to answer the question) stated that in his opinion they did not, and observed that "you can again quote from the president of the American Federation of Musicians in his testimony before the Senate when he said that it is not every union that can demand these things or is strong enough to demand them." 1945 Hearings, pp. 101–102.

That such demands could properly be regarded by Congress as impairing the ability of radio stations to serve the listening public hardly needs demonstration. Among the factors which the Federal Communications Commission con-

siders in issuing licenses to broadcasters is their financial ability to make good use of the assigned channel. See Federal Communications Act, Sec. 308 (b), 47 U. S. C. 308 (b); *Federal Communications Commission* v. *Sanders Radio Station*, 309 U. S. 470, 475. To require broadcasters to expend their assets in paying more employees than they need—something which they normally would do in the absence of some form of coercion—diminishes the resources available for giving the public the best possible programs. In particular, such demands may affect the very existence of the large number of small stations with small resources upon which a substantial portion of the nation depends. See pp. 19, 26–27, *supra*. If the broadcasters comply with the demand for unneeded employees, their capacity to furnish the community with other useful services, such as non-remunerative programs, will obviously be impaired. If they do not comply they will, at the very least, be unable to provide the public with the musical entertainment which it desires, and in many instances, as Congress was aware (see pp. 28–29, *supra*) be forced by outside pressure to shut down altogether. The House Committee found (H. Rep. No. 1508, 79th Cong., 2d Sess., p. 3 *infra*, p. 162):

> * * * The amount of money extorted from the broadcasting industry by these methods, without moral right, has reached millions of dollars in amount and if demands now pending were granted it

would, by these racketeering and extortion methods, require the broadcasting industry to pay tribute probably much in excess of $20,000,000 a year for peace against these boycotts, strikes, and threats.

The broadcasting industry has been surrendering to these demands for tribute to avoid the greater losses that would result from failure to comply.[17]

There is thus ample basis for the conclusion of the Committee that to subject the industry "to

[17] Appellee has urged below that this estimate was excessive and in disregard of amounts ascertainable from the records of the Federal Communications Commission. These records, which are referred to in 1945 Hearings, p. 69, relate only to staff musicians employed by the radio stations themselves. They also not include the "large part of the revenue derived directly from radio by members of the A. F. of M. [which] results from the employment of musicians by the sponsors of commercial radio programs" (1945 Hearings, p. 66), or the amounts paid by hotels, restaurants, and the like to orchestras whose programs are broadcast, or the amounts paid by broadcasters to recording companies who in turn employ musicians. *Ibid.* The Commission reports disclosed that in 1944 over $10,000,000 was paid to staff musicians. *Id.*, at 69. The War Labor Board estimated that in various forms radio paid musicians $30,000,000. *Id.*, at 65–66; *Electrical Transcription Mfrs.*, 16 War Labor Reports 369, 381. Obviously no one can prophesy with accuracy how much the practices outlawed by this statute would cost the industry as a whole in the future. There is no reason to doubt that the amount will be substantial, and this is all that is material here. See 1945 Hearings, p. 77, which cites appellee as stating that the royalties on the recordings to be paid to the Federation would "during wartime, while there was a ceiling price on records and a limitation on the number of records which could be manufactured * * * aggregate *only* $4,000,000 a year." [Italics supplied.]

extortionate demands enforced by coercive methods" would "increasingly threaten to restrict and handicap it in performing its rightful functions to the Nation". H. Rep. 1508, 79th Cong., 2d Sess., p. 2 (*infra*, p. 158). The statute thus represents a legislative effort to protect the public's interest in good radio service. Since radio is interstate, this is clearly a legitimate Congressional objective under the Commerce Clause. And it can hardly be claimed that the particular course which Congress chose to follow bears no relation to the end which it sought to achieve.

II

CONGRESS' POWER TO PUNISH MONOPOLIES AND RESTRAINTS OF TRADE IN INTERSTATE COMMERCE MAY VALIDLY BE BROUGHT TO BEAR AGAINST LABOR UNIONS

That Congress has authority, in the exercise of its commerce power, to regulate and prohibit monopolistic practices affecting interstate radio broadcasting would seem too plain for argument. Cf. *National Broadcasting Co.* v. *United States*, 319 U. S. 190. Previous attempts of the executive department to obtain judicial relief from the coercive practices of the American Federation of Musicians have been fruitless, not because the Federal Government lacks constitutional power but rather because of the limitations imposed by Congress in the Clayton and Norris-LaGuardia Acts. *United States* v. *American Federation of Musicians*, 318 U. S. 741. When this case was

called to the attention of Congress while it was considering the legislation with which we are here concerned, it was made plain that the decision had been based on "laws * * * passed by Congress," which Congress, presumably, could change. 1945 Hearings, pp. 87–88.

This Congressional assumption that its power to punish restraints of interstate commerce extends to restraints imposed by labor is firmly grounded in the decisions of this Court. In *Apex Hosiery Co.* v. *Leader*, 310 U. S. 469, this Court explicitly stated (p. 488), that "Whether labor organizations and their activities are wholly excluded from the Sherman Act is a question of statutory construction, not constitutional power." And the opinion read as a whole indicates plainly that the Court did not doubt the power of Congress to control "strikes or agreements not to work" (310 U. S., at 503) restraining interstate commerce, but was holding only that such strikes in themselves did not necessarily violate the Sherman Act. And, just as clearly, in *United States* v. *Hutcheson*, 312 U. S. 219, the ruling that a jurisdictional strike did not violate the antitrust law, was based on the fact that "Congress in the Norris-LaGuardia Act has expressed the public policy of the United States * * * in order to 'obviate the results of the judicial construction' theretofore given the Clayton Act." 312 U. S., at 234. The emphasis in the opinion is entirely

upon the importance of conforming to Congressional policy. If labor were to "combine with non-labor groups" (p. 232), the opinion declared, the antitrust law would still be applicable—although a strike in such a situation might be just as peaceful and in the self-interest of the strikers as in any other.

This statement in the *Hutcheson* opinion was followed in *Allen-Bradley Co.* v. *Local Union No. 3*, 325 U. S. 797, in which the Court recently held a combination of labor and employers to raise prices and monopolize the market to be a violation of the Sherman Act. Apart from the fact that the union in that case was cooperating with the employers, a factor which the opinion clearly indicates is of no *constitutional* significance (see *infra*, p. 38), the practices of Local No. 3 were quite similar to those of the American Federation of Musicians. Local No. 3 had a tight monopoly of the manufacture and installation of electrical equipment in New York City.[18] In order to maintain its monopoly and "to enlarge employment opportunities for its members" (325 U. S., at 799), the electrical workers union went so far as to require manufactured equipment brought into New York "to

[18] Our statement of the facts of the *Allen-Bradley* case is taken both from this Court's opinion and from the opinion of the Circuit Court of Appeals (145 F. 2d 215), to which this Court referred (325 U. S., at 798) for a more detailed statement of the facts.

be unwired and rewired" by its members before installation (145 F. 2d, at 218), clearly a method of forcing the employment of unneeded labor not basically different from that availed of by the Musicians' Union. "In the course of time, this type of individual employer-employee agreement expanded into industry-wide understandings, looking not merely to terms and conditions of employment but also to price and market control" (325 U. S., at 799–800). This goal of barring all outside electrical equipment from New York City was accomplished "by the traditional labor weapons of refusal to work upon disfavored goods, with peaceful and non-violent persuasion, picketing, and blacklisting, and now the active participation of the local employers" (145 F. 2d, at 219). There was "a specific finding that there was no evidence of any violence or any threat of violence against any of the plaintiffs by any of the defendants" (145 F. 2d, at 219n).

This Court held the conduct of the union unlawful because of the association with non-labor groups. It required the district court to modify its injunction, which had restrained peaceful picketing, boycotting and striking, "so as to enjoin only those prohibited activities in which the union engaged in combination 'with any person, firm or corporation which is a non-labor group * * *'" (325 U. S., at 812).

The Court thus clearly sanctioned an injunction which forbade peaceful striking and picket-

ing by a union acting in its own self-interest, when acting in combination with other groups. The fact that the union had combined with some employers in its activities does not, of course, change the inherent nature of its conduct in coercing—peacefully but effectively—other employers.

The factor of employer cooperation, though of importance under the Sherman Act, clearly has no constitutional significance. The opinion recognizes this in replying to the criticism contained in Mr. Justice Roberts' separate opinion that its holding meant that a union could accomplish the same end if it did not act in combination with business groups. In this connection the opinion states (325 U. S., at 810):

> This, it is argued, brings about a wholly undesirable result—one which leaves labor unions free to engage in conduct which restrains trade. But the desirability of such an exemption of labor unions is a question for the determination of Congress. *Apex Hosiery Co.* v. *Leader, supra.*

There can therefore be no question that the Court would have sustained an injunction against the same type of conduct, designed to restrain trade in the same way apart from employer participation, if it had thought that Congress had so provided.

That the same types of conduct may constitute a crime under the Sherman Act is also shown by

United Brotherhood of Carpenters, et al. v. *United States*, Nos. 6–10, decided March 10, 1947, in which the *Allen-Bradley* case was followed.

The power of Congress to deal with restraints of trade by labor is not, of course, exhausted by the Sherman Act. Congress may partially remove the exemptions from the antitrust law by special legislation for particular industries in which it thinks abuses exist, without having to repeal them generally. And that, in substance, is what Congress has done in Section 506 of the Communications Act. Apart from the Norris-LaGuardia and Clayton Acts appellee's activities might well have been deemed a violation of the Sherman Act itself. The decision that the Sherman Act did not apply in *United States* v. *American Federation of Musicians, supra,* was based entirely upon the Norris-LaGuardia Act, and the history of the present statute shows that Congress meant to overturn that decision. The power of Congress to remove an exemption which it has created can scarcely be denied.

The *Allen-Bradley* case is, we submit, decisive as to the constitutional power of Congress to prohibit activities of labor unions, including striking and peaceful picketing, which restrain or monopolize interstate commerce, and thus is dispositive of the issues raised as to the constitutionality of the Lea Act as applied to striking

and picketing. Nevertheless, in the face of the *Allen Bradley* case, appellee contends that Congress was without power to punish the coercive acts with which he is charged. We turn now to a specific analysis of the various aspects of appellee's challenge to the constitutional validity of the Lea Act.

III

APPELLEE HAS NO CONSTITUTIONAL RIGHT TO DIRECT AND CAUSE OTHER PERSONS TO DISCONTINUE OR NOT TO ACCEPT EMPLOYMENT

A. *Neither the Thirteenth nor the Fifth Amendment protects a right to order other persons not to work*

Appellee contends that the statute is invalid in that it restricts the right to strike contrary to the Thirteenth Amendment, which prohibits "involuntary servitude" (Br. 43–52), and contrary to the Fifth Amendment which prohibits deprivation "of life, liberty or property without due process of law" (Br. 59–65).

In support of this position appellee argued below (Br., p. 43) that "the information charges the discontinuance of employment as a crime." But the information charges no such thing. All that the information charges is that appellee attempted to coerce Station WAAF by "directing and causing" "other persons" to discontinue their employment and not to accept employment. Appellee is not thus being prosecuted for quitting

work or for refusing to work for WAAF. The information alleged, and appellee has admitted, that he is the president of the American Federation of Musicians, and it has not been suggested by appellee, or alleged by the Government, that he ever worked for Station WAAF, refused to work for that station, or had any intention of working there. Obviously he had not.

Accordingly, the appellee's claim can only be that he has a constitutional right protected by the Thirteenth and Fifth Amendments to order other persons not to work. No question as to the right to strike is raised by the information, and this Court is not called upon to determine hypothetical constitutional issues not presented by the facts of this case.[19]

The recent decision of this Court in *United States* v. *United Mine Workers*, Nos. 759-760, decided March 6, 1947, suffices to dispose of the contention that a labor leader has a constitutional right to order others to refrain from work. In that case the district court had restrained the president of the United Mine Workers, as well as the Union itself, from "coercing, instigating, inducing, or encouraging the mine workers at the bituminous coal mines in the Government's pos-

[19] We shall consider below (*infra*, pp. 133 *et seq.*) appellee's attempt to broaden the issue on the ground that the Lea Act must be treated as an inseparable whole which must be held unconstitutional in its entirety if any application might be invalid.

session, or any of them, or any person, to interfere by strike, slow down, walkout, cessation of work, or otherwise, with the operation of said mines by continuing in effect the aforesaid notice or by issuing any notice of termination of agreement or through any other means or device" (slip sheet, p. 6). This Court upheld the authority of the district court to issue such an injunction. The prohibition contained in the injunction against inducing workers to interfere by "strike" or "cessation of work" or "otherwise" with the operation of the mines is indistinguishable constitutionally from the offense charged in the information that appellee "directed and caused" other persons not to work for Station WAAF.

The defendants in the *United Mine Workers* case contended that the injunction issued by the district court violated the Thirteenth Amendment, for the same reasons as are urged here. See brief of *United Mine Workers of America and John L. Lewis*, Nos. 759–760, pp. 50–54. This Court did not consider the point substantial enough to warrant discussion in its opinion. With respect to it, the Court declared merely that "we have examined the other contentions advanced by the defendants but have found them to be without merit" (slip sheet, p. 16).

Clearly if the district court had power in the *United Mine Workers* case to order the defendants not to induce others to strike or to refrain from working without violating any constitutional

guaranty, Congress has at least the same power.

We submit that the contention that the Thirteenth Amendment protects a person in his right to order others not to work warrants the summary treatment accorded it in the *United Mine Workers* case. That Amendment provides that "neither slavery nor involuntary servitude * * * shall exist within the United States". The language and the familiar background of the Amendment demonstrate, if proof be needed, that it does not give constitutional protection to a "right" to order other persons not to work. No case under the Amendment supports any such claim.[20] The suggestion that the president of the

[20] The cases under the Amendment are: *Pollock* v. *Williams*, 322 U. S. 4; *United States* v. *Gaskin*, 320 U. S. 527; *Taylor* v. *Georgia*, 315 U. S. 25; *Corrigan* v. *Buckley*, 271 U. S. 323; *Marcus Brown Co.* v. *Feldman*, 256 U. S. 170; *Butler* v. *Perry*, 240 U. S. 328; *United States* v. *Reynolds*, 235 U. S. 133; *Bailey* v. *Alabama*, 219 U. S. 219; *Hodges* v. *United States*, 203 U. S. 1; *Robertson* v. *Baldwin*, 165 U. S. 275; *Plessy* v. *Ferguson*, 163 U. S. 537; *Civil Rights Cases*, 109 U. S. 3; *Slaughter-House Cases*, 16 Wall. 36. See also *International Brotherhood of Elec. W.* v. *Western U. Tel. Co.*, 6 F. 2d 444 (C. C. A. 7), affirming a temporary injunction prohibiting the union from engaging in strikes and other activities to compel an employer building contractor to breach its contract with the Western Union Company under which the latter's employees (non-union) installed call boxes in buildings under construction. The court rejected the contention that the decree violated the Thirteenth Amendment by forcing the union men to work against their will side by side with non-union men. After a trial the injunction was made permanent. *International Brotherhood, Etc.* v. *Western U. Tel. Co.*, 46 F. 2d 736 (C. C. A. 7), certiorari denied, 284 U. S. 630.

American Federation of Musicians is being subjected to slavery or involuntary servitude by a statute which restricts his dictatorial powers over others is obviously absurd.

Nor does the appellee have any greater rights under the provision of the Fifth Amendment which prohibits the deprivation of "liberty * * * without due process of law." Since appellee cannot complain that *he* is being deprived of liberty to work or not to work for whom he chooses, the case does not involve the question whether the Due Process Clause gives a person an absolute right to work or not work as he sees fit. Appellee is reduced to arguing that he has a constitutionally protected liberty to order other persons to refrain from working.

The freedom to interfere with the working relations of others certainly rises to no higher constitutional level than, for example, the freedom to enter into working relations on any terms one chooses, a freedom which has been held subject to legislative control without violation of the Due Process Clause. *West Coast Hotel Co.* v. *Parrish*, 300 U. S. 379, 391–393, and cases cited; *Virginian Ry. Co.* v. *System Federation*, 300 U. S. 515, 558; *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 43–45; *United States* v. *Darby*, 312 U. S. 100, 125. As the Court declared in upholding the validity of minimum wage legislation (*West Coast Hotel Co.* v. *Parrish*, 300 U. S., at 391):

> [The Amendment] speaks of liberty and prohibits the deprivation of liberty without due process of law. In prohibiting that deprivation the Constitution does not recognize an absolute and uncontrollable liberty. * * *, the liberty safeguarded is liberty in a social organization which requires the protection of law against the evils which menace the health, safety, morals and welfare of the people. Liberty under the Constitution is thus necessarily subject to the restraints of due process, and regulation which is reasonable in relation to its subject and is adopted in the interests of the community is due process.

(p. 392:)

> * * * There is no absolute freedom to do as one wills or to contract as one chooses. The guaranty of liberty does not withdraw from legislative supervision that wide department of activity which consists of the making of contracts, or deny to government the power to provide restrictive safeguards. Liberty implies the absence of arbitrary restraint, not immunity from reasonable regulations and prohibitions imposed in the interests of the community. *Chicago, B. & Q. R. Co.* v. *McGuire*, 219 U. S. 549, 567.

The question of substantive due process here presented is therefore merely whether the statute is reasonable in relation to its subject, whether it bears a reasonable relation to a subject with

which the legislative may deal. We have demonstrated in Point I, *supra*, that the statute is reasonably related to the lawful Congressional objective of preventing the "wasteful use" of the facilities of interstate radio (*supra*, p. 24). In seeking to attain this objective Congress was not acting arbitrarily or unreasonably in prohibiting the coercion of radio licensees to employ more persons than they need to perform actual services; such a demand on its face would compel a waste of financial resources which could be used to public advantage. Many courts have held such demands unlawful even in the absence of a statute.[21] It certainly cannot become unconstitutionally arbitrary or unreasonable for the federal legislature to adopt the same policy.

Clearly if Congress has the power to protect radio licensees from being coerced into such wasteful practices, it can prohibit any and all means of coercion, including the ordering of other persons to refrain from working for the radio licensee.

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[21] *Lafayette Dramatic Productions* v. *Ferentz*, 305 Mich. 193, 9 N. W. 2d 57 (1943); *Opera on Tour* v. *Weber*, 285 N. Y. 348, 34 N. E. 2d 349; certiorari denied, 314 U. S. 615; *Haverhill Strand Theater* v. *Gillen*, 229 Mass. 413, 118 N. E. 671; *Benito Rovira Co., Inc.* v. *Yampolsky, et al.*, 187 N. Y. Supp. 894 (Sup. Ct. N. Y.); *Welinsky* v. *Hillman, et al.*, 185 N. Y. Supp. 257 (Sup. Ct. N. Y.). Contra: *Scott-Stafford Opera House Co.* v. *Minn. Ass'n*, 118 Minn. 410, 136 N. W. 1092; *Empire Theater Co.* v. *Cloke*, 53 Mont. 183, 163 P. 107. For a discussion of a related problem, see Teller, *Focal Problems in American Labor Law—Opera on Tour, Inc.* v. *Weber*, 28 Va. L. Rev. 727, 742 (1942).

B. THE ACT IS NOT AN UNCONSTITUTIONAL INTERFERENCE WITH ANY *RIGHT TO STRIKE*

Appellee treats the case as if the worker's right to strike is indistinguishable from the right of another to order him to strike, and argues that the limitation on the right to strike imposed by this statute is unconstitutional. Although we do not think the issue properly before the Court, we do not wish the contention to go unanswered. In addition, the governing principles and the authorities dealing with the right to strike have a bearing on the following section of this brief, which is concerned with the right to picket.

1. *Basic principles*

That the right to strike is not absolute is not only shown by a vast number of decisions in this Court and in state and lower federal courts which have held particular strikes to be unlawful at common law or under the Sherman Act, but is conceded by appellee.

This Court, speaking through Mr. Justice Brandeis, dealt with the constitutional contention in *Dorchy* v. *Kansas*, 272 U. S. 306. In that case a union had called a strike in violation of a state statute in order to compel the employer to pay a disputed wage claim to one of its members who had formerly been employed. The objective of securing payment of wages claimed to be due would seem to be in the economic self-interest of the union and its members. The contention was

that a state criminal proceeding against the leaders of the union was barred by the United States Constitution. We quote in full the paragraph in which Mr. Justice Brandeis, speaking for a unanimous Court, rejected this contention (272 U. S., at 311):

> The right to carry on business—be it called liberty or property—has value. To interfere with this right without just cause is unlawful. The fact that the injury was inflicted by a strike is sometimes a justification. But a strike may be illegal because of its purpose, however orderly the manner in which it is conducted. To collect a stale claim due to a fellow member of the union who was formerly employed in the business is not a permissible purpose. In the absence of a valid agreement to the contrary, each party to a disputed claim may insist that it be determined only by a court. Compare *Guaranty Trust Co.* v. *Green Cove R. R.*, 139 U. S. 137, 143; *Red Cross Line* v. *Atlantic Fruit Co.*, 264 U. S. 109. To enforce payment by a strike is clearly coercion. The legislature may make such action punishable criminally, as extortion or otherwise. Compare *People* v. *Barondess*, 16 N. Y. 436; 133 N. Y. 649. And it may subject to punishment him who uses the power or influence incident to his office in a union to order the strike. Neither the common law, nor the Fourteenth Amendment, confers the absolute right to strike.

Compare *Aikens* v. *Wisconsin*, 195 U. S. 194, 204–5.

Although the *Dorchy* opinion only adverts specifically to the Fourteenth Amendment, it is equally inconsistent with any notion that the right to strike is constitutionally protected by the Thirteenth.

The above quotation is extremely significant here. Not only does it deny that the Constitution "confers the absolute right to strike". It holds that "however orderly the manner in which it is conducted" "a strike may be illegal because of its purpose", that a strike may be coercive, and that (p. 311) "The legislature may make such action punishable criminally, as extortion or otherwise. * * * And it may subject to punishment him who uses the power or influence incident to his office in a union to order the strike." All these observations are appropriate in connection with this case.

The *Dorchy* decision was in line with the view previously expressed by Mr. Justice Brandeis in his dissent in *Duplex Printing Press Co.* v. *Deering*, 254 U. S. 443, 488, wherein he said:

> Because I have come to the conclusion that both the common law of a State and a statute of the United States declare the right of industrial combatants to push their struggle to the limits of the justification of self-interest, I do not wish to be understood as attaching any *constitutional*

> or moral sanction to that right. All rights are derived from the purposes of the society in which they exist; above all rights rises duty to the community. The conditions developed in industry may be such that those engaged in it cannot continue their struggle without danger to the community. But it is not for judges to determine whether such conditions exist, nor is it their function to set the limits of permissible contest and to declare the duties which the new situation demands. This is the function of the legislature which, while limiting individual and group rights of aggression and defense, may substitute processes of justice for the more primitive method of trial by combat. [Italics supplied.]

This Court has in no way departed from the *Dorchy* case in its recent decisions. On the contrary it has reaffirmed the views of Mr. Justice Brandeis. The question has arisen most frequently in cases under the Sherman Antitrust Act since that is the primary federal statute which generally prohibits restraints on interstate commerce.

The Sherman Act cases relevant here have been discussed *supra*, pp. 35–39. They serve to make plain the Congressional power to prohibit restraints of interstate trade even when the moving force is a labor union. The *Allen-Bradley* case, in particular (325 U. S. 797), demonstrates the power of Congress to ban such restraints even

when that ban means a prohibition on strikes and picketing. Since, as these authorities show, the right to strike is not absolute, it follows that strikes may in some circumstances be made unlawful. What those circumstances are is obviously a matter of policy, to be determined by the legislative branch of the Government, subject to the Due Process limitation that they not act arbitrarily or in a manner without reasonable relation to a legitimate legislative objective. See pp. 44–46, 55–58.

It can hardly be denied that Congress was not unreasonable in concluding that the featherbedding or make work demands of the Federation of Musicians are inconsistent with the public interest in good broadcasting. Such demands might have been "lawful", "legitimate", or "proper" under preexisting statutory or common law, on the theory that it was justifiable for labor to make demands so long as it was acting peaceably and in its economic self-interest. But such a test does not have constitutional stature. The quoted words, which have been used freely by appellee in this case, embody policy concepts and have been used by the courts in determining, under the common law and other statutes, what conduct should be enjoined in labor disputes. These cases arose in fields in which the courts were left at large to determine such questions of policy. But normally it is the function of the legislature to determine what is lawful and

legitimate, and we believe that the Federal legislature has the right to determine national policy on such matters as well as on others. The questions with which we must be concerned in this case are not whether appellee's conduct was "proper" or "legitimate" or "lawful" in the abstract, but whether there is anything in the Constitution of the United States which precludes Congress from making it unlawful whether it was before or not.

Appellee's argument that it is proper for a union to seek to procure employment for its members, even by make-work devices, affords an illustration of what we mean. Under the common law of some States and under recent statutes such as the Norris-LaGuardia Act a union may not be prohibited from making and enforcing demands which are in the economic self-interest of its members. Although a number of State courts have treated as unlawful the type of demand involved in this case (see p. 46, *supra*), we may assume that a demand for make-work, that an employer hire more workers than he needs, would fall within that category, since it is to the interest of the union to have more members employed. Self-interest, however, is not a test of one's constitutional rights, in the labor field or any other. Legislators may enact laws in the public interest which may interfere with, restrict and injure the self-interest of individuals or groups. To say that

everyone has a constitutional right, with which legislators and courts may not interfere, to act in his economic self-interest as he sees fit would create an economic anarchy not dreamed of in the most extreme days of *laissez faire*. It certainly does not follow that because something will benefit the persons who demand it, a legislature may not prohibit coercion to enforce the demand. It could similarly be said, as to many crimes, that the perpetrators will be benefited by their misdeeds and that the crime was in their economic self-interest. Thus a concept which may be valuable in defining the area in which there shall not be judicial intrusion or when courts are applying general legislative terms is irrelevant to the determination of the legislature's constitutional power.

In its reply brief below (pp. 16–17) appellee stated that he—

> has nowhere contended, and does not now contend, that the right to strike and the right to picket are "absolute" rights. It is elementary that all individual rights are subject to varying degrees of reasonable restraints and limitations in the interest of the public welfare, and there is nothing whatever in the defendant's entire brief that suggests otherwise.

Appellee's position is that peaceful striking or picketing cannot be prohibited unless the purpose of the strike is unlawful, and that the purpose is not unlawful when the victim can agree to the demands without himself violating any law. Appel-

lee relies in particular on paragraph (c) of the Lea Act, which provides that:

> The provisions of subsection (a) or (b) of this section shall not be held to make unlawful the enforcement or attempted enforcement, by means lawfully employed, of any contract right heretofore or hereafter existing or of any legal obligation heretofore or hereafter incurred or assumed.

From this appellee argues that since the licensee could voluntarily enter into an agreement to hire unneeded employees, a strike to compel him to do so cannot be a strike for an unlawful purpose.

The Lea Act does not make all strikes illegal, but only coercion by any means, including strikes, for specified objectives. Clearly Congress was not making the means alone unlawful, apart from the objective of the strikers. Conversely it is true that the objective is not made unlawful where not sought to be obtained by coercion. It is our position (1) that the constitutionality of the statute is not to be determined by the application of any such elusive verbalism as whether the "means" or the "objective" (or, as here, a combination of both) is made unlawful, and (2) that if "unlawful objective" is a constitutional criterion, the Lea Act nevertheless fully satisfies it.

2. *"Unlawful objective" is not a constitutional test*

The "unlawful objective" test has been developed in common law labor cases as a convenient

device for determining what strikes ought to be enjoined. At common law the activities of labor organizations were regarded as unlawful if either the means or the objective was illegal. Section 6 of the Clayton Act (38 Stat. 731, 15 U. S. C. Sec. 17) recognizes this theory in providing that "nothing contained in the antitrust laws shall be construed * * * to forbid or restrain individual members of such [labor] organizations from *lawfully* carrying out the *legitimate* objects thereof". [Italics supplied.]

But the power of Congress is not to be tested by any such formula. An exercise of the commerce power does not run afoul of due process where "the means chosen are appropriate to the permissible end". *Virginian Ry. Co.* v. *System Federation*, 300 U. S. 515, 558. The ultimate question is whether a statute is arbitrary in relation to a proper legislative purpose. Cf. *United Public Workers* v. *Mitchell*, No. 20, decided February 10, 1947, slip sheet, pp. 18–19, 22.

In so far as peaceful strikes are concerned, a single illustration will demonstrate that the regulatory power of Congress is not confined to an "unlawful objective" test. In the first Railway Labor Act case, *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks*, 281 U. S. 548, the Court clearly implied that the provision in that statute prohibiting for thirty days changes in the conditions out of which the dispute arose was a judicially enforceable limitation upon "the right

to strike". See 281 U. S., at 565, 566. But the strikes forbidden by the Railway Labor Act during the period prescribed for negotiations would normally be for such lawful objectives as improved wages, hours and working conditions.

We have shown that it is proper for Congress under the Commerce Clause to seek to eliminate wasteful monopolistic practices which interfere with the most efficient use of radio facilities, and that it was not arbitrary or unreasonable for Congress to find that coercion to compel the employment of employees not needed had such a deleterious effect. This constitutional goal could not be achieved if the power of Congress does not extend to the coercion exercised by strikes, which are the normal means by which a monopolistic union accomplishes its objectives. Indeed it is clear that Congress deliberately used language broad enough to encompass strikes because it was aware that otherwise "the legislation would fail to accomplish its purpose". H. Rep. No. 1508, p. 6. The Committee Report further states (p. 6, *infra*, pp. 167–168):

> It has been necessary to use the broad language "or by the use or express or implied threat of the use of other means" in order to make the legislation effective. It was necessary to use language broad enough to embrace actual or threatened boycotts and actual or threatened strikes, because these, as well as action or threatened action of like character, could well be

among the means by which the coercion, compulsion, or constraint prohibited by the bill may be accomplished or attempted to be accomplished. If the language were not this broad the legislation would fail to accomplish its purpose:

* * * A strike or threat of a strike is one method by which it is possible to exert or attempt to exert such coercion, compulsion or constraint, and, if it is the method used, the wrongful character of the offense is the same as though other means had been used.

In these circumstances Congress was employing not only an appropriate but an essential means if it was to accomplish a legitimate constitutional end under the Commerce Clause, and its action cannot be deemed arbitrary, capricious or unreasonable. The right to strike, like other rights and liberties, such as contract and property rights, is under the Due Process Clause subject to reasonable regulation in the interest of the community. Liberty of contract: *West Coast Hotel Co.* v. *Parrish*, 300 U. S. 379, 391–3, and cases cited; *Norman* v. *Baltimore & Ohio R. Co.*, 294 U. S. 240, 306–310; *Virginian Ry. Co.* v. *System Federation*, 300 U. S. 515, 558. Property rights: *Euclid* v. *Ambler Realty Co.*, 272 U. S. 365; *North American Co.* v. *Securities and Exchange Commission*, 327 U. S. 686, 708; *Ruppert* v. *Caffey*, 251 U. S. 264. Right to strike: *Dorchy* v. *Kansas*, 272 U. S. 306; *Allen-Bradley Co.* v. *Local Union*

No. 3, 325 U. S. 797, and the antitrust labor cases preceding the Norris-LaGuardia Act.

3. *The Lea Act satisfies the "unlawful objective" test*

If we accept the "unlawful objective" test, appellee is no better off. Congress has here not made the means, such as striking and picketing, unlawful apart from the unlawful objectives enumerated in the statute. A strike directed at inducing a licensee to accede to a demand that he hire persons he does not need is thus a strike for an unlawful purpose, and nonetheless so because it would be lawful for the licensee to hire more workers if he wanted to. The object of an extortioner or robber is to obtain money from the victim against his will. That object is unlawful, even though it would be entirely within the law for the victim to agree as a matter of contract or gift and without coercion that he give the same person the same amount of money. A monopolistic combination may not, under the Sherman Act, force a competitor to raise prices by oral or other threats of economic reprisal, although the competitor would have a perfect right to raise his prices voluntarily if he saw fit. Under the National Labor Relations Act employers may not force workers to enter into contracts by anti-union threats, although the same contracts would be perfectly valid in the absence of coercion.

It is unnecessary, however, to theorize as to the nature of the "unlawful purpose" for which a strike may be forbidden, for a comparison with the precedents we have cited, as well as with the common law authorities from which the principle is derived, demonstrates the untenability of appellee's argument. The *Dorchy* case itself provides the simplest analogy. This Court there held that a strike called to collect payment of a stale wage claim was for an unlawful purpose and subject to restraint (*supra*, pp. 47–49). But it would not have been unlawful for the union there to have requested that the payment be made, or for the employer to have agreed to make it, or for him to have made it of his own accord. The payment was not unlawful, although coercion for the purpose of obtaining it was. In antitrust cases such as the *Allen-Bradley* case it would not be unlawful for a single employer of his own accord to agree to the union's demands so long as he was not a party to the conspiracy with other employers.

Equally important as showing the meaning of "unlawful purpose" is the common law doctrine that a strike for an unlawful or improper purpose may be restrained. American Law Institute, Restatement of the Law of Torts, Volume IV, pp. 94–95, Section 775; *Dorchy* v. *Kansas*, 272 U. S. 306; *Hitchman Coal & Coke Co.* v. *Mitchell*, 245 U. S. 229; Oakes, *Organized Labor and Industrial Conflicts* (1927), pp. 376, 424, 433; Frankfurter and Greene, *The Labor Injunction*

(1930), pp. 25–30; 15 C. J. S. 1008. The diversity of opinion as to what purposes should be held unlawful has not interfered with the general recognition of this principle.

Typical cases in which the common law doctrine has developed, and in which courts—though not all courts—have held strikes unlawful, are those involving the validity of demands that an employer cease to use non-union goods or cease dealing with another non-union employer,[22] or that an employer hire more workers or refuse to use labor saving machinery.[23] The cases affording an employer relief from such demands when sought to be enforced by strikes do not suggest that it would be unlawful for him to accept them if he wished, or for him to conduct his business in accordance with them of his own accord. Obviously in such cases, as in most cases in which strikes have been enjoined, it would be entirely

[22] I, Teller, *Labor Disputes and Collective Bargaining*, Section 103 (1940). This treatise declares that decisions in ten states illegalize this type of strike while decisions in eight states hold it valid, and that in California a recent statute has adopted the former view.

[23] *Lafayette Dramatic Productions* v. *Ferentz*, 305 Mich. 193, 9 N. W. 2d 57 (1943); *Opera on Tour* v. *Weber*, 285 N. Y. 348, 34 N. E. 2d 349, certiorari denied, 314 U. S. 615; *Haverhill Strand Theater* v. *Gillen*, 229 Mass. 413, 118 N. E. 671; *Benito Rovira Co., Inc.* v. *Yampolsky, et al.*, 187 N. Y. Supp. 894 (Sup. Ct. N. Y.); *Welinsky* v. *Hillman, et al.*, 185 N. Y. Supp. 257 (Sup. Ct. N. Y.). Contra: *Scott-Stafford Opera House Co.* v. *Minn. Ass'n*, 118 Minn. 440, 136 N. W. 1092; *Empire Theater Co.* v. *Cloke*, 53 Mont. 183, 163 P. 197.

lawful for the employer voluntarily to grant the union's demands.[24]

Furthermore, appellee's argument that paragraph (c) of the Act proves that Congress was not disapproving the hiring of unneeded employees is entirely unrealistic. Congress was aware of the obvious, that it is to the self-interest of the licensee not to employ unneeded personnel. Congress doubtless believed that, with coercion prohibited, licensees could be counted on not to agree to employ more persons than were needed for actual services.[25] The private interest of the licensee could be expected to protect the public

[24] In Frankfurter and Greene, *The Labor Injunction* (1930), it is noted that although Massachusetts holds strikes for a closed shop to be for an unlawful purpose (pp. 28–29; *Folsom* v. *Lewis*, 208 Mass. 336), "an agreement between an employer and the union, voluntarily entered into, whereby the employer promises to hire only union men, or to give them preference, or to give all his work to members of the union will be given legal protection against interference or breach" (p. 30). It is further stated that in Massachusetts "an agreement voluntarily entered into by an employer not to use any non-union made materials is valid, although a strike to enforce such an agreement is beyond the pale" (pp. 29–30). See *A. T. Stearns Lumber Co.* v. *Howlett*, 260 Mass. 45, 60–61. Although the Massachusetts decisions have been criticized, it has never been suggested that they were in violation of the Federal Constitution.

[25] The statute is also inoperative with respect to pre-existing contracts, even though obtained by coercion. Congress deliberately chose not to overturn such arrangements. The licensee would, of course, have an opportunity at the expiration of any such contract to determine for himself whether to agree to a renewal.

interest in avoiding the wasteful use of radio resources. There was, therefore, no reason for Congress to do more than prohibit coercion.

Thus the fact that Section 506 (c) provides that the Section does not make unlawful the enforcement of contracts which might contain conditions which could not under Section 506 (a) and (b) be imposed upon an employer by coercion does not mean that strikes to coerce an employer into accepting the enumerated conditions are not strikes for unlawful objectives. Clearly the statute does not prohibit strikes as such, but only strikes to accomplish particular purposes which Congress thought contrary to the public well-being, and declared unlawful.

That this was the congressional intention appears from the legislative history of the Act. The House Committee Report (H. Rep. No. 1508, 79th Cong., 2d Sess.), declares (p. 4, *infra*, p. 164):

> * * * This bill provides no unjust limitation on the right to strike. The law recognizes the right to strike *for lawful purposes* and in a lawful manner. The right to strike should be exercised as other rights of the citizen. We have the right of free speech but that is not a justification for slander. We have the right to bear arms but that is not a justification of murder. Any person may properly organize *for lawful purposes but criminal purposes are beyond their legitimate function.* [Italics supplied.]

(p 6, *infra*, pp. 167–168):

> This subsection does not prohibit the right to strike or to withhold services, or force individuals to work against their will or desire. It will place no limitation whatever on the use of strikes *for the accomplishment of legitimate objectives,* such as wage increases or better working conditions. The subsection does not prohibit strikes *as such.* What it does do is to prohibit the accomplishment, by actual or attempted coercion, compulsion, or constraint, *of certain unconscionable and wrongful objectives,* regardless of the means used. [Italics supplied.]

Although the debates on the floor of Congress did not reflect unanimity in understanding of the point here involved, the generally expressed view was in accord with the Committee Report.[20]

Representative Lea, Chairman of the Committee, stated in language reflecting the common law rule to which we have referred (92 Cong. Rec. 1550):

> I believe the fundamental principle underlying this question of the right to strike is that a strike is legal and should be so, when it is for lawful purposes carried on by lawful means. That is a perfectly safe, sane, and just thing, but this idea of saying

[20] The Committee Reports are entitled to much greater weight as manifestations of legislative intention than the debates on the floor. *United States* v. *St. Paul M. & M. Ry. Co.*, 247 U. S. 310, 318; *Lapina* v. *Williams*, 232 U. S. 78, 92.

that Congress is powerless to prescribe a rule that prevents a strike being carried on for the purpose of committing a crime it seems to me is just absolutely without foundation in our Constitution or in our law. A crime is no less a crime because it may be committeed by an organized group.

Mr. ROBISON of Kentucky. But if I have understood this bill correctly it does not apply at all unless there is coercion and extortion united.

Mr. LEA. That is right. There must be coercion *and for the unlawful purpose* declared in this bill. [Italics supplied.]

Representative Lea subsequently stated (*id.*, at 1559):

Mr. LEA. If the strike is of coercive character *for those purposes* then it is prohibited by this bill. In other words, to *strike for an unlawful purpose* is unlawful and is prohibited by the bill. [Italics supplied.]

In the Senate, Senator Johnson, who was in charge of the bill, stated (*id.*, at 3244, 3245):

* * * It is as if we would pass a law and say it shall be unlawful to commit murder, and then list the ways one could commit murder, with a bow and arrow, with a shotgun, with an air rifle, with a knife, or other weapon. The bill says one can not coerce or constrain or attempt to coerce or compel or constrain a licensee by any means.

* * * * * *

* * * It is a prohibition against having to hire and pay for more than they need. * * *

p. 3245:

Mr. JOHNSON of Colorado. I yield.

Mr. BALL. Is it the Senator's interpretation of the language in the opening clause of both (a) and (b) "or implied threat of the use of other means, to coerce" that a strike by the musicians' union or any other union around a broadcasting station to compel the employer to sign a contract agreeing to any of these feather-bedding practices, so-called, would be an illegal strike, and those who called it would be in violation of this section?

Mr. JOHNSON of Colorado. Yes, if they attempted to make use of coercion or compulsion or constraint *to accomplish their purpose,* it would be unlawful so far as the six feather-bedding provisions are concerned.

Mr. BALL. Then, a strike certainly is an attempt to coerce. It has gotten a little beyond, I think, merely talking about it, or peaceful persuasion, and a strike to force any of those particular provisions into a contract would then become an illegal strike.

Mr. JOHNSON of Colorado. *But a strike for other purposes, for other objectives, would be perfectly legal* and would not be interfered with in any way by provisions

(1), (2), (3), (4), (5), and (6). [Italics supplied.]

* * * * *

Senator Austin, also a member of the Committee who was active in explaining the bill, subsequently declared (*id.*, at 3248):

> Mr. AUSTIN. Did the Senator ask what was comprehended by the words "other mean[illegible]
>
> Mr. [illegible]OR. Yes.
>
> Mr. [illegible] In the conference we discussed [illegible]se words, and it was definitely understood that they included strikes and boycotts. Is that what the Senator refers to?
>
> Mr. TAYLOR. Persons may not strike——
>
> Mr. AUSTIN. They may not strike in order to gain the advantage of these misdemeanors which are set forth. However, they may strike *for anything which is not unlawful*. With the exception of the nine things which are prohibited in the relationship between the licensee and his artists and between the artists and the reproducers of sound, the nine which are regarded as in conflict with our free institutions and our self-respect, there may be a strike for anything else. There may be a strike for a new contract with reference to wages, with reference to hours, or with reference to anything else except those things which are denounced because they have been proven through experience as being a type

of tyranny which others should not suffer. [Italics supplied.]

* * * * *

Despite the criticism of the opponents of the bill, who made the same point appellee is now urging (92 Cong. Rec. 1554, 3250), the sponsors of the bill were of the view that it made the enumerated objectives unlawful and forbade coercive practices, including strikes, only when aimed at these unlawful objectives. Congress obviously did not believe that the possibility that an employer might agree to such demands if he saw fit was inconsistent with this view. Since the Congressional understanding as to the meaning of a strike for an unlawful purpose was the same as that of the courts in similar situations, as we have seen, there can be no question as to the constitutionality of this application of the unlawful purpose rule. And obviously it is proper for the legislative body, even more than for the courts, to decide what purposes should be considered unlawful.

The many state and lower federal court cases cited by appellee below (brief, pp. 45–52) do not support the proposition that the Constitution protects the right to strike against reasonable legislative limitation. Most of the cases cited were common law authorities not dealing with any constitutional problem. The statements in some opinions that a person has as much right to quit work in concert with others as singly, even

as a statement of common law policy must be contrasted with the many cases, including those in this Court, in which strikes have been enjoined. All of the latter are inconsistent with the notion that the Constitution guarantees the right to strike. Appellee has cited neither decision, dissent nor dictum of this Court in support of its contention.[27] Indeed, this Court, in holding that while merchants have a right individually to refuse to purchase from anyone they please they cannot do the same thing in combination, has stated: "An act lawful when done by one may become wrongful when done by many acting in concert, taking on the form of a conspiracy which may be prohibited if the result be hurtful to the public or to the individual against whom the concerted action is directed" *Federal Trade Commission* v. *Raymond Bros.-Clark Co.*, 263 U. S. 565, 574; *Eastern States Retail Lumber Dealers Assoc.* v. *United States*, 234 U. S. 600, 614; *Grenada Lumber Co.* v. *Mississippi*, 217 U. S. 433, 440.

[27] *Alabama State Federation of Labor* v. *McAdory*, 246 Ala. 1, 18 So. 2d 810, cited by appellee, held that a state law forbidding all strikes not authorized by a majority of the bargaining unit by secret ballot was unconstitutional because it was a general prohibition covering lawful strikes called for lawful purposes. The State did not appeal to this Court from this portion of the decision, so that problem was not before the Court when it dismissed the union's appeal in *Alabama State Federation of Labor* v. *McAdory*, 325 U. S. 450. To the extent that the decision of the District Court for Kansas in *Stapleton* v. *Mitchell*, 60 F. Supp. 51, goes further, it is inconsistent with the controlling authorities which we have previously cited.

IV

APPELLEE'S RIGHTS UNDER THE FIRST AMENDMENT ARE NOT INFRINGED

The information alleges that the defendant "did attempt to coerce" the licensee to employ more persons than were needed "by placing and causing to be placed a person as a picket in front of the place of business of said licensee." In the absence of an allegation to the contrary it must be assumed that the picketing was peaceful. But since the information so alleges, it also must be taken as true that the picketing was an attempt to coerce the licensee.

This Court has held that since picketing is a method of communicating ideas, States may not enact sweeping prohibitions of all picketing (*Thornhill* v. *Alabama*, 310 U. S. 88; *Carlson* v. *California*, 310 U. S. 106) or of all picketing where there is no dispute between an employer and his employees (*A. F. of L.* v. *Swing*, 312 U. S. 321; *Bakery Drivers Local* v. *Wohl*, 315 U. S. 769; *Cafeteria Employees Union* v. *Angelos*, 320 U. S. 293). But the Lea Act is not directed at picketing but at coercion. It does not prohibit picketing as such at all, but only all coercive means of forcing radio licensees to accept certain types of demands. Picketing may violate the Act only if and to the extent that it is coercive—and to the extent that it is coercive, like other forms of coercive speech it is not protected by the First Amendment.

In addition, coercion through picketing is prohibited by the Lea Act only when undertaken for purposes which Congress has characterized as unlawful. Picketing for an unlawful purpose may be forbidden, when there is plainly a clear and present danger that it may bring about substantive evils which Congress has a right to prevent.

A. COERCIVE PICKETING IS NOT PROTECTED BY THE FIRST AMENDMENT

This Court has held in the cases cited immediately above that peaceful picketing—the carrying of a placard containing written statements—is a form of speech or writing within the meaning of the First Amendment. But writings on such placards, or remarks by pickets, are entitled to no more constitutional protection than other forms of speech or writing. And it is well established that when words are used in order to coerce, the First Amendment does not protect them.

To take the simplest example, a man may be sent to jail for threats of violence, oral or written, although they consist of mere words. The principle is not limited, however, to threats of physical injury. That it includes economic injury as well is established by cases under the Sherman and National Labor Relations Act.

1. *The Sherman Act analogy*

Persons or organizations possessing monopoly economic power need not, and generally do not,

effectuate that power through physical violence. Oral or written threats or even suggestions will normally suffice to bring a recalcitrant member of the dominated industry into line. If a combination of sellers wrote, or told, a purchaser depending upon them for supplies that he would be deprived of goods if he did not raise his prices, or if a similar combination threatened to boycott anyone who sold to a price-cutting competitor, the Sherman Act would unquestionably be violated[*]—and nonetheless so because the economic pressure was exerted through written or spoken words. The same would be true if the combination of competitors arranged for a person to walk in front of another's business premises, carrying a sign saying "Unfair to Organized Business," with the intent and knowledge that this would prevent deliveries from being made. In all these situations a demand coupled with power to cause harm to the recipient is coercive and unlawful, and is not treated merely as speech.

[*] An "Official Report" issued by an association of retailers listing the names of those wholesalers who sold directly to consumers, and intended to persuade the retailers receiving the report to withhold patronage from the wholesalers listed, violates the Sherman Act. *Eastern Retail Lumber Dealers' Association* v. *United States*, 234 U. S. 600. The fact that the blacklisting was in writing, or contained in a publication, or even that it did not contain any threats on its face, did not entitle it to the protection of the First Amendment. See also *Gompers* v. *Buck Stove & Range Co.*, 221 U. S. 418, quoted *infra*, pp. 72–73; *United States* v. *General Motors Corp.*, 121 F. 2d 376, 394 (C. C. A. 7), certiorari denied, 314 U. S. 618; *Lawlor* v. *Loewe*, 208 U. S. 274; *Binderup* v. *Pathe Exchange*, 263 U. S. 291, 303.

The *Allen-Bradley* case discussed at length, *supra*, pp. 36–39, shows that peaceful picketing to coerce non-cooperators by economic pressure may be enjoined under the Sherman Act.

While the speech and writings of business men and of labor leaders are equally protected by the First Amendment (*Thomas* v. *Collins*, 323 U. S. 516, 538, quoted *infra*, pp. 75–76), it is thus established that as to neither does this protection extend to words used to force compliance with monopolistic demands. Clearly the statements on a picket's sign are entitled to no more constitutional protection than words or speech generally.

In an early decision involving restraint of trade the Court expressly rejected the argument that a labor organization was protected by the First Amendment in announcing an illegal boycott by publication in its periodical, a publication seemingly entitled to no less protection than pickets' signs. With respect to that problem this Court unanimously declared, in terms equally applicable here (*Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418) (p. 437):

> "But whatever the requirement of the particular jurisdiction, as to the conditions on which the injunction against a boycott may issue; when these facts exist, the strong current of authority is that the publication and use of letters, circulars and printed matter may constitute a means whereby a boycott is unlawfully continued,

and their use for such purpose may amount to a violation of the order of injunction. * * *

(p. 438):

* * * But if the contention be sound that no court under any circumstances can enjoin a boycott if spoken words or printed matter were used as one of the instrumentalities by which it was made effective, then it could not do so, even if interstate commerce was restrained by means of a blacklist, boycott or printed device to accomplish its purpose. * * *

(pp. 438–439):

* * * the principle announced by the court * * * covered any illegal means by which interstate commerce is restrained, whether by unlawful combinations of capital, or unlawful combinations of labor; and we think also whether the restraint be occasioned by unlawful contracts, trusts, pooling arrangements, blacklists, boycotts, coercion, threats, intimidation, and whether these be made effective, in whole or in part, by acts, words or printed matter.

The court's protective and restraining powers extend to every device whereby property is irreparably damaged or commerce is illegally restrained. To hold that the restraint of trade under the Sherman anti-trust act, or on general principles of law, could be enjoined, but that the means through which the restraint was accomplished could not be enjoined would be to render the law impotent.

2. *The National Labor Relations Act analogy*

Many cases under the National Labor Relations Act also hold that pressure exerted by means of words may be enjoined. An employer may be compelled to cease and desist from telling his employees, orally or in writing, that he will fire or otherwise discriminate against them if they join a labor union.[29] He may not tell them that he will close his plant if the employees become unionized.[30] As the Circuit Court of Appeals for the Sixth Circuit declared in *National Labor Relations Board* v. *Peterson*, 157 F. 2d 514, 515 certiorari denied, March 17, 1947:

> But in the decisions upon this point, the right of freedom of speech of the employer, in making statements disparaging of the Union, has always been held to be justified only if the expressions in controversy are

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[29] E. g., *National Labor Relations Board* v. *Peterson*, 157 F. 2d 514, 515 (C. C. A. 6), certiorari denied, March 17, 1947; *R. R. Donnelley & Sons Company* v. *National Labor Relations Board*, 156 F. 2d 416 (C. C. A. 7), certiorari denied, January 20, 1947; *National Labor Relations Board* v. *Aluminum Goods Manufacturing Co.*, 125 F. 2d 353, 355 (C. C. A. 7); *Glatfelter Co.* v. *National Labor Relations Board*, 141 F. 2d 631 (C. C. A. 3); *Consolidated Aircraft Corp.* v. *National Labor Relations Board*, 141 F. 2d 785, 788 (C. C. A. 9); *National Labor Relations Board* v. *American Laundry Machine Co.*, 152 F. 2d 400, 401 (C. C. A. 2).

[30] E. g., *National Labor Relations Board* v. *American Pearl Button Co.*, 149 F. 2d 311, 314–315 (C. C. A. 8); *National Labor Relations Board* v. *Franks Bros. Co.*, 137 F. 2d 989, 992 (C. C. A. 1), affirmed (without consideration of this point), 321 U. S. 702

> noncoercive. If they are couched in such phrases, or attended by such circumstances that they tend to exercise undue influence and coercion upon the employees, the expressions of opinion are not protected.

And even statements by an employer which on their face are not coercive may be forbidden when it appears that, in connection with other circumstances, they amount to coercion. *National Labor Relations Board* v. *Virginia Electric & Power Co.*, 314 U. S. 469, 477–479; *Virginia Electric & Power Co.* v. *National Labor Relations Board*, 319 U. S. 533, 539; *May Department Stores Co.* v. *National Labor Relations Board*, 326 U. S. 376, 386. In the first *Virginia Electric* case the Supreme Court stated (314 U. S., at 477):

> * * * conduct, though evidenced in part by speech, may amount, in connection with other circumstances, to coercion within the meaning of the Act. * * * And in determining whether a course of conduct amounts to restraint or coercion, pressure exerted vocally by the employer may no more be disregarded than pressure exerted in other ways. * * *

More recently, in *Thomas* v. *Collins*, 323 U. S. 516, 537–538, the Court declared that while employers had the right to persuade with respect to joining or not joining unions within the First Amendment's guaranty:

> * * * When to this persuasion other things are added which bring about coer-

> cion, or give it that character, the limit of the right has been passed. * * * Of course espousal of the cause of labor is entitled to no higher constitutional protection than the espousal of any other lawful cause. It is entitled to the same protection.

And Mr. Justice Douglas stated in a concurring opinion (323 U. S. at 543–544):

> * * * No one may be required to obtain a license in order to speak. But once he uses the economic power which he has over other men and their jobs to influence their action, he is doing more than exercising the freedom of speech protected by the First Amendment. That is true whether he be an employer or an employee. * * *

Congress may therefore provide, as it has in the National Labor Relations Act, that it is unlawful for an employer to *say* to an employee that he will keep any employee who joins a union from working in his or any other plant; it would be equally unlawful for the employer to say anything designed to give the employee that impression, whatever the form of words used. Such an oral statement, when considered in the light of the employer's superior economic power, is coercion, plain and simple, not the communication of information.

Equally coercive would be a statement by a labor leader who controls a union having a monopoly of employment opportunities in an entire

industry that he will prevent an employer from doing business, or an employee who works for a particular employer from ever getting a job in the industry again. In each instance, as in the case of the robber who states orally that he will shoot if the victim refuses to hand over his money, an oral statement accompanied by a power which gives it a coercive effect is more than mere speech, and the First Amendment does not protect it.

The Government has alleged that picketing here is coercive. It is entitled to prove the "other circumstances" which give it that character—in which may be included the appellee's dominance in the industry and his authority over the musicians; the known consequences to them of disobedience to his orders, and the association of picketing with striking; the effect of the pickets' placard as a signal not to work rather than as a statement of information.

These factors are the equivalent of the circumstances with respect to employer pressure under the Labor Relations Act which transform remarks not coercive on their face into coercive statements which may be forbidden without violating the First Amendment.

3. *Restraints by labor monopolies cannot be effectively regulated if coercive but peaceful picketing is immune from legislative control*

Furthermore, it is obvious that restraints by labor monopolies cannot be regulated or forbidden

if peaceful strikes and picketing are immune from legislative control. If a labor organization does not have monopoly power, its orders to strike or to refrain from working, or its picket line, may not be respected, and it may be forced to resort to violence in order to support its demands upon a particular employer. But such crudity is unnecessary when the union has a monopoly, as well as a membership disciplined in obeying union orders and familiar with the dire consequences that will follow upon disobedience. A union leader then need only issue an oral or written order. It might even suffice for him merely to announce that a "contract" is no longer in effect. Cf. *United States* v. *United Mine Workers*, decided March 6, 1947. If the men are trained to refrain from working when such a verbal signal is given, the effect would be the same as if it were a mandatory order. In *Gompers* v. *Buck Stove & Range Co.*, 221 U. S. 418, 439, this Court stated in this connection:

> In the case of an unlawful conspiracy, the agreement to act in concert when the signal is published, gives the words "Unfair," "We don't patronize," or similar expressions, a force not inhering in the words themselves, and therefore exceeding any possible right of speech which a single individual might have. Under such circumstances they become what have been called "verbal acts," and as much subject to injunction as the use of any other

> force whereby property is unlawfully damaged. * * *

And the placement of a single sign outside an employer's premises stating that he is "unfair" will be such a signal; members will know that the consequences of disobedience to such a command, whether expressed in informational or mandatory terms, will be expulsion from the union and inability to obtain work in the future.

Since it is common knowledge that these are the tactics of strong unions, Congress must have been aware that no law designed to regulate the conduct of so tightly controlled and well disciplined an organization as the Federation of Musicians could be successful unless it reached the peaceful but notoriously effective means by which such a union in fact achieves obedience to its commands. We think that the Court will also take notice of the obvious, that unless peaceful instructions not to work, whether set forth on pickets' placards or elsewhere, are within the reach of governmental authority, the Government will be helpless to control or regulate the conduct of monopolistic unions even though such regulation is substantively within its constitutional powers.

We submit that the First Amendment was not intended and has not been construed to free coercive conduct from lawful regulation because a person has such power over others that he may effect his coercion by means of peaceful words.

The information here charges that the picketing was coercive. This allegation, which must be taken as true on this appeal, establishes in itself that the First Amendment does not aid appellee.

4. *This Court's recent decisions on picketing do not invalidate statutes which prohibit only coercion and reach picketing only to the extent that it is coercive*

This Court's decisions assimilating picketing to speech are not at all inconsistent with our view that to the extent that picketing is coercive it is not constitutionally protected. The first two of the five cases in which the Court has held picketing protected by the First Amendment (*Thornhill* v. *Alabama*, 310 U. S. 88; *Carlson* v. *California*, 310 U. S. 106), as subsequently summarized in *Milk Wagon Drivers Union* v. *Meadowmoor Dairies*, 312 U. S. 287, 297, "involved statutes baldly forbidding all picketing near an employer's place of business." In the three other cases (*A. F. of L.* v. *Swing*, 312 U. S. 321; *Bakery Drivers Local* v. *Wohl*, 315 U. S. 769; *Cafeteria Employees Union* v. *Angelos*, 320 U. S. 293), the question was whether a State could prohibit all picketing "in relation to any dispute between an employer and a trade union unless the employer's own employees are in controversy with him" (*A. F. of L.* v. *Swing*, 312 U. S., at 325), or all picketing where there was no "labor dispute" within the meaning of a State anti-injunction act (*Wohl* and *Angelos* cases).

These decisions held only that blanket prohibitions of picketing, which did not differentiate between persuasion and coercion or between the lawful and the unlawful purpose, violated the First Amendment. The reasoning of the Court, as appears from the leading *Thornhill* case, is that the "dissemination of information" (310 U. S., at 102) and "free discussion concerning the conditions in industry and the causes of labor disputes" (*id.*, at 103), are to be protected by the First Amendment. The emphasis on "discussion" and "information" shows what the Court had in mind and refutes any suggestion that coercive picketing was to be protected.

That this is so appears clearly from the *Meadowmoor* case, in which the Court upheld the right of Illinois to prohibit even peaceful picketing when violence had given the picketing coercive effect (312 U. S., at 298). The dissent of Mr. Justice Reed in that case is also consistent with the view that coercive picketing is not constitutionally protected, since he states that "industrial controversy may not overstep the bounds of an appeal to reason and sympathy." (312 U. S., at 319.)

In the *Wohl* case the Court stated that (315 U. S., at 775):

> * * * A state is not required to tolerate in all places and all circumstances even peaceful picketing by an individual.

The opinion in that case notes that there was no showing that the publication there "was attended or likely to be attended by violence, force or coercion; *or conduct otherwise unlawful or oppressive*" (315 U. S., at 775). The italicized phrase clearly implies that threats of other types of pressure, in addition to threats of physical violence, are not given constitutional protection by the First Amendment. The important factor is whether the pressure upon the employer results from the disclosure of information to, or an appeal to the reasoning of, persons who see the pickets, or from the fact that they dare not disregard what in substance is a mandatory order. This appears to be recognized in the concurring opinion of Mr. Justice Douglas in the *Wohl* case, wherein he stated (315 U. S., at 776–777):

> Picketing by an organized group is more than free speech, since it involves patrol of a particular locality and since the very presence of a picket line may induce action of one kind or another, quite irrespective of the nature of the ideas which are being disseminated. Hence those aspects of picketing make it the subject of restrictive regulation.

The decision in *Carpenters Union* v. *Ritter's Cafe*, 315 U. S. 722, which permitted a State to restrain picketing not limited to the area of the industry concerned, also demonstrates that picketing is not regarded merely as discussion, persua-

sion and the dissemination of information. For if it were, whether the communication was made in one area rather than another would seem immaterial. The Court there refused to accept the petitioner's "claim that there is to be found in the Due Process Clause of the Fourteenth Amendment a constitutional command that peaceful picketing must be wholly immune from regulation by the community in order to protect the general interest, that the states must be powerless to confine the use of this industrial weapon within reasonable bounds." 315 U. S., at 725.

None of the recent cases have even suggested the invalidity of statutes which prohibit not picketing generally but coercion, and which reach picketing only when, and to the extent that, it is coercive. Since the Lea Act applies only to coercion its application to such picketing does not violate the First Amendment.

B. PICKETING FOR AN UNLAWFUL PURPOSE IS NOT PROTECTED BY THE FIRST AMENDMENT

We have shown (*supra*, pp. 40-46) that Congress has the power to make it unlawful in specified circumstances for a person to order other persons not to work. Such instructions would, as a matter of course, be given orally or in writing. Congress' power must be just as great if the instructions are given through the device of a man carrying a placard in front of the licensee's premises as by written or oral notices given elsewhere.

We have also shown (*supra*, pp. 47–62) that Congress has the power under the Constitution to prohibit strikes for specified unlawful purposes. What has been said as to strikes is equally true as to picketing. It is well established at common law that if a strike is unlawful because of its purpose, picketing for the same objective is also unlawful.[1] If that were not so, a declaration as to the illegality of a strike would be useless, since the union could accomplish the unlawful objective by picketing. This rule has not been changed by the recent decisions of this Court. The *Allen-Bradley* case, 325 U. S. 797, as we have noted (*supra*, pp. 36–38), upheld an injunction against picketing as well as striking when the object of the union was in violation of the Sherman Act. This case, which is the latest of those dealing with picketing, is the only one of the recent decisions in which any unlawful purpose was shown, and accordingly is controlling on that aspect of the picketing problem.

In none of the picketing cases discussed *supra*, pp. 80–82, is there an explicit reference to the lawfulness of the objective. But the *Thornhill* opinion declares that (310 U. S., at 103–104):

> It is true that the rights of employers and employees to conduct their economic

[1] I. Teller, *Labor Disputes and Collective Bargaining*, Sections 113–114.

> affairs and to compete with others for a share in the products of industry are subject to modification or qualification in the interests of the society in which they exist. This is but an instance of the power of the State to set the limits of permissible contest open to industrial combatants. See Mr. Justice Brandeis in 254 U. S., at 488. * * *

This passage was reemphasized by the Court in *Carpenters Union* v. *Ritter's Cafe*, 315 U. S. 722. It clearly suggests that the efforts of legislative bodies affirmatively to limit the area of "permissible contest open to industrial combatants" will be respected—and any such legislative limitation would be futile if striking or picketing in disregard of it could not be touched.

That the Court regarded striking and picketing as subject to similar restrictions is apparent from the citations supporting the above passage in the *Thornhill* opinion, in which Mr. Justice Murphy refers to Mr. Justice Brandeis' statement in the *Duplex* case, quoted *supra*, pp. 49–50, as well as to *Dorchy* v. *Kansas*, discussed *supra*, pp. 47–49. These citations in the picketing cases of opinions recognizing the legislative power to prohibit strikes for unlawful purposes would be meaningless unless the Court meant that picketing could constitutionally be controlled in the same way. Clearly for Congress to have power under the Constitution to prescribe the ends for which strik-

ing would be unlawful would be futile if labor organizations could accomplish the same lawful purpose by means of picketing—which would be equally effective in many industries in keeping persons from working.

The fact that picketing may be a form of speech, or of writing, does not impair the validity of these conclusions. Any order issued by a labor leader directing union members not to work for an employer would take the form of an oral or written communication. The fact that it may be carried up and down the sidewalk in front of the employers' place of business on a cardboard placard gives it no greater sanctity than any other statement. And if union members will read any placard borne by the picket as a direction not to work for the employer, the wording of the placard is immaterial. The placard merely is a "signal" that the command not to work is in effect. See *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418, 436–439, quoted *supra*, p. 78.

A number of state supreme courts have construed the recent decisions of this Court as not protecting picketing for unlawful purposes. *Lafayette Dramatic Productions* v. *Ferentz*, 305 Mich. 193, 9 N. W. 2d 57 (1943); *Harper* v. *Brennan*, 311 Mich. 489, 18 N. W. 2d 905 (1945); *Wisconsin Employment Relations Board* v. *Milk Drivers Union*, 238 Wis. 379, 9 N. W. 2d 57

(1941), certiorari denied, 316 U. S. 668; *Retail Clerks' Union* v. *Wisconsin Employment Relations Board*, 242 Wis. 21, 6 N. W. 2d 698 (1942); *R. H. White Co.* v. *Murphy*, 310 Mass. 510, 38 N. E. 2d 685 (1942); *Markham & Callow* v. *International Woodworkers*, 170 Ore. 517, 135 P. 2d 727 (1943); *Peters* v. *Central Labor Council*, 169 P. 2d 870, 874 (Ore. 1946). In the *Lafayette* case, decided in 1943, and involving the precise situation at which the Lea Act was directed, the right of the musicians' union to force the hiring of unnecessary musicians, the Michigan Supreme Court said (305 Mich. at 213–214):

> In the present case defendants' objective was to compel plaintiff to employ musicians which it did not need or desire. Such objective invaded plaintiff's right to conduct its business without unjust interference and its right to the free flow of labor. * * * We are satisfied that defendants' purpose was to accomplish an unlawful labor objective.
>
> In effect, defendants argue that the stagehands' union and the musicians' union had the right to strike and to do peaceful picketing. We do not deny them that right in the accomplishment of a legitimate labor objective. However, we do deny them the right to combine for the purpose of using such lawful methods to obtain an unlawful labor objective. *Opera on Tour, Inc.* v. *Weber, supra.*

In the most recent *Peters* decision, the Oregon Supreme Court stated with respect to this Court's decision (169 P. 2d, at 874):

> * * * It is significant that in those cases where the Supreme Court identified picketing with free speech no unlawful purpose of the picketing was involved. That courts may take into consideration the purpose of the picketing is established by the great weight of authority. * * * *

The point was carefully considered by Professor Dodd in an article[32] which defends and supports this Court's decisions on picketing. In this connection he states (56 Harv. L. Rev. 524):

> * * * Picketing is, however, more than the statement of a case. When made use of by strikers, it is an express or implied invitation to the public to aid the strikers by refraining from dealing with their employer. If the concerted action of the strikers is unlawful by reason of its

[32] Dodd, *Picketing and Free Speech: A Dissent*, 56 Harv. L. Rev. 513 (1943). Other discussions of this Court's decision on picketing may be found in Teller, *Picketing and Free Speech*, 56 Harv. L. Rev. 180 (1942), (reprinted with supplementary discussion in 1946 Cum. Supp. to Teller, *Labor Disputes and Collective Bargaining*, pp. 59–88); Teller, *Picketing and Free Speech: A Reply*, 56 Harv. L. Rev. 532 (1943); Jaffe, *In Defense of the Supreme Court's Picketing Doctrine*, 41 Mich. L. Rev. 1037 (1943); Larson, *May Peaceful Picketing Be Enjoined?*, 22 Tex. L. Rev. 392 (1944); Ratner and Conne, *The Norris-LaGuardia Act In The Constitution*, 11 Geo. Wash. L. Rev. 428 (1943); Schlusselberg, *The Free Speech Safeguard for Labor Picketing*, 34 Ky. Law Journal 3 (1945).

> purpose, it would be difficult to uphold the contention that they have a constitutional right to attempt to urge others to assist them in accomplishing that purpose. Soliciting others to give aid to an unlawful course of conduct is not constitutionally protected free speech, at least where there is a "clear and present danger" that the solicitation will be successful and thus bring about the "substantive evils which Congress [or a state legislature or court] has a right to prevent." [Citing *Schenck* v. *United States*]

Appellee argues, however, that the picketing here is not for an unlawful purpose, inasmuch as the licensee may voluntarily do what the union is forbidden to coerce it to do. This is the same point made with respect to striking, already discussed herein at page 53–67, *supra*. Our answer is the same, and based on the same authorities, which involved both striking and picketing. They show that picketing as well as striking may be for an unlawful purpose within the meaning of that expression in the field of labor law, if an objective is one that cannot lawfully be forced upon an employer even though he could lawfully voluntarily assent to it. Without repeating our argument, it would seem sufficient to point out that the *Allen-Bradley* case held that peaceful picketing for an unlawful purpose may be enjoined even though the party picketing might voluntarily have agreed to the union's demands.

The clear and present danger test.—Appellee also argues that the right of freedom of speech cannot be circumscribed "by the device of declaring certain objectives to be unlawful", that "the only proper limitation on the right of free speech is * * * the 'clear and present danger' test," and that "there is no 'substantive evil'" to which the "clear and present danger test" can be applied (reply brief below, pp. 29-30).

It is to be noted that appellee does not deny that if compelling radio licensees to hire unnecessary employees is a substantive evil, as Congress reasonably found it was, picketing is a practice which would directly and immediately—or clearly and presently—produce the evil Congress was seeking to prevent. Appellee cannot deny the known effectiveness of his picket line in preventing musicians from working. Picketing which is designed to accomplish and which, unless restrained by law, will accomplish, something which Congress has made unlawful will bring about "a clear and present danger" of "the substantive evils that Congress has a right to prevent." *Schenck* v. *United States*, 249 U. S. 47, 52 (per Holmes, J.)

We can concede the applicability of the "clear and present danger test" as classically stated by Mr. Justice Holmes in the *Schenck* case.[33] But

[33] "The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent."

the Lea Act does define evils which Congress may seek to prevent under the Commerce Clause (see pp. 16–34, *supra*), and, in Professor Dodd's words, "there is a 'clear and present danger' that the solicitation will be successful" in bringing about those evils—particularly in an industry dictatorially controlled by a single labor organization whose members will not bear to risk loss of a future livelihood by crossing a picket line.

This Court has observed that for the clear and present danger test to be satisfied there must be a "substantial" or "serious" evil threatened by the utterance, not a mere matter of "public inconvenience or annoyance." *Bridges* v. *California*, 314 U. S. 252, 261–263; *Thomas* v. *Collins*, 323 U. S. 516, 530, 536; *Pennekamp* v. *Florida*, 328 U. S. 331, 334. The Lea Act, which is directed at specified coercive restraints of interstate trade for purposes deemed akin to extortion does

(*Schenck* v. *United States*, 249 U. S. 47, 52). The *Schenck* case doctrine has been frequently reaffirmed by this Court. *Herndon* v. *Lowry*, 301 U. S. 242, 256; *Thornhill* v. *Alabama*, 310 U. S. 88, 105; *Cantwell* v. *Connecticut*, 310 U. S. 296, 311; *Bridges* v. *California*, 314 U. S. 252, 261; *Chaplinsky* v. *New Hampshire*, 315 U. S. 568, 571; *Hartzel* v. *United States*, 322 U. S. 680, 687; *Thomas* v. *Collins*, 323 U. S. 516, 527; *Pennekamp* v. *Florida*, 328 U. S. 331, 335, 352–353. The test has also been mentioned in concurring and dissenting opinions in *Abrams* v. *United States*, 250 U. S. 616, 627; *Schaefer* v. *United States*, 251 U. S. 466, 482; *Pierce* v. *United States*, 252 U. S. 239, 255; *Gitlow* v. *New York*, 268 U. S. 652, 672–673; *Whitney* v. *California*, 274 U. S. 357, 373; *Bridges* v. *Wixon*, 326 U. S. 135, 164; *Marsh* v. *Alabama*, 326 U. S. 501, 512.

deal with substantial and serious evils. Its basic policy is similar to that of the antitrust laws, the importance of which cannot be questioned and which have been held applicable to picketing. See pp. 34–40, *supra*.

Since the Lea Act by its terms prohibits only coercion to attain the enumerated ends, it reaches only activities which are closely related to accomplishing the prohibited objective, as distinct from acts having a mere tendency to effect them. At the very least the Government should be permitted to prove its allegation that the picketing was coercive.

Furthermore, we are not arguing, as appellee implies, that Congress may prevent people from talking about certain subjects by declaring objectives to be unlawful. The Lea Act, like the Sherman Act and the National Labor Relations Act, is a regulatory statute aimed at substantive coercive practices, not at speech or writings or picketing as such. Speech or writing fall within its prohibitions only if they lead to the consequences which Congress had a right to seek to avert.

V

SECTION 506 DOES NOT VIOLATE THE FIFTH AMENDMENT BY DENYING THE EQUAL PROTECTION OF THE LAWS

Appellee argues that Section 506 violates the Due Process Clause of the Fifth Amendment by depriving him of the equal protection of the laws in that (a) it applies only to employees and not

to employers, (b) it applies only to the radio broadcasting industry, and (c) it reaches other employees of the broadcasting industry than musicians, although there was no evidence to show that any but musicians had been guilty of any excess (reply brief below, p. 33).[34] There is no substance to any of these contentions.

It may be noted preliminarily that, as this Court has frequently stated, "Unlike the Fourteenth Amendment, the Fifth contains no equal protection clause and it provides no guaranty against discriminatory legislation by Congress. *LaBelle Iron Works* v. *United States*, 256 U. S. 377, 392; *Steward Machine Co.* v. *Davis*, 301 U. S. 548, 584–585; *Sunshine Coal Co.* v. *Adkins*, 310 U. S. 381, 400, 401; *Helvering* v. *Lerner Stores Co.*, 314 U. S. 463, 468." *Detroit Bank* v. *United States*, 317 U. S. 329, 337–338; *Hirabayashi* v. *United States*, 320 U. S. 81, 100. Any legislative classification which is not so arbitrary as to deny due process of law will therefore be upheld, and the Court has stated, what the above cases clearly imply, that the Due Process Clause imposes "restraints less narrow and confining" than the Equal Protection Clause. *Steward Machine Co.* v. *Davis*, 301 U. S. 548, 584.

In any event, it is clear that Section 506 does not contain a classification which would violate either the Equal Protection or the Due Process Clause.

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[34] The District Court accepted the first two of these contentions (R. 7–8).

A. *Discrimination in favor of employers*

The appellee's argument that Section 506 arbitrarily differentiates between the acts of employers and of employees rests on the fact that the Section does not prohibit licensees, for example, from hiring or agreeing to hire, more employees than they need but merely forbids anyone from forcing them to do so. This is similar to contending that because A may lawfully give B $10, it is unconstitutional to make it a crime for B to obtain the $10 from A by extortion or coercion.

If we assume that the voluntary employment by radio licensees of unnecessary personnel would also enhance costs and thereby burden the public's interest in the best possible interstate radio service, it does not follow that Congress was under any obligation to forbid it—especially since the Federal Communications Commission might have present authority to take such a matter into account in determining whether to grant or renew licenses. See pp. 31–32, *supra*. There has been no showing or even suggestion that the practice of hiring unnecessary employees has been prevalent in the industry apart from outside coercion, or that radio service has in fact been harmed by it. As we have seen, Congress could reasonably assume that the employers' normal self-interest would coincide with the public's interest in this respect, and would be sufficient in and of itself to prevent this type of practice in the absence

of coercion. On the other hand, there was ample evidence before Congress that the American Federation of Musicians was subjecting the industry and the public to the burden in question.

This Court has frequently held that "Congress may hit at a particular danger where it is seen, without providing for others which are not so evident or so urgent" (*Hirabayashi* v. *United States*, 320 U. S. 81, 100; *Keeley Coke Co.* v. *Taylor*, 234 U. S. 224, 227), and that a legislature (*Central Lumber Co.* v. *South Dakota*, 226 U. S. 157, 160–161):

> * * * may direct its law against what it deems the evil as it actually exists without covering the whole field of possible abuses, and it may do so none the less that the forbidden act does not differ in kind from those that are allowed. *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U. S. 61, 81. *Missouri Pacific Ry. Co.* v. *Mackey*, 127 U. S. 205.
>
> * * * If a class is deemed to present a conspicuous example of what the legislature seeks to prevent, the Fourteenth Amendment allows it to be dealt with although otherwise and merely logically not distinguishable from others not embraced in the law. *Carroll* v. *Greenwich Ins. Co.*, 199 U. S. 401, 411. * * *

Appellee's contention that Section 506 violates due process of law because it does not apply to the employers is strikingly similar to the converse argument advanced when employers were at-

tacking the National Labor Relations Act. The Court's reply to this argument in *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 46, is equally apt here. The Court there stated:

> The Act has been criticised as one-sided in its application; that it subjects the employer to supervision and restraint and leaves untouched the abuses for which employees may be responsible; that it fails to provide a more comprehensive plan,—with better assurances of fairness to both sides and with increased chances of success in bringing about, if not compelling equitable solutions of industrial disputes affecting interstate commerce. But we are dealing with the power of Congress, not with a particular policy or with the extent to which policy should go. We have frequently said that the legislative authority, exerted within its proper field, need not embrace all the evils within its reach. The Constitution does not forbid "cautious advance, step by step," in dealing with the evils which are exhibited in activities within the range of legislative power. *Carroll* v. *Greenwich Insurance Co.*, 199 U. S. 401, 411; *Keokee Coke Co.* v. *Taylor*, 234 U. S. 224, 227; *Miller* v. *Wilson*, 236 U. S. 373, 384; *Sproles* v. *Binford*, 286 U. S. 374, 396. * * *

A similar argument was recently rejected by the Court in *Alabama State Federation of Labor*

v. *McAdory*, 325 U. S. 450, 471–472. The Court there stated:

> The contention that the Act denies equal protection because its provisions, or some of them, have not been extended to business corporations or associations or to labor organizations which are subject to the Railway Labor Act, 45 U. S. C. § 151 *et seq.*, is without substance. The Constitution does not oblige a state to regulate or reform all types of associations and organizations, or none. It may begin with such as in its judgment most need regulation. *Carroll* v. *Greenwich Insurance Co.*, 199 U. S. 401, 411; *Keokee Coke Co.* v. *Taylor*, 234 U. S. 224, 227; *Bunting* v. *Oregon*, 243 U. S. 426; *Sproles* v. *Binford*, 286 U. S. 374, 396; cf. *West Coast Hotel Co.* v. *Parrish*, 300 U. S. 379, 400, and cases cited. And for this reason it may exclude from regulatory measures organizations which it has reason to believe are already appropriately regulated by either state or national legislation. *Ziffrin, Inc.*, v. *Reeves*, 308 U. S. 132, 140; cf. *Union Bank & Trust Co.* v. *Phelps*, 288 U. S. 181, 186.

The last sentence in the passage quoted is especially pertinent in view of the subjection of licensees to detailed regulation by the Federal Communications Commission.

B. *Discrimination in favor of other industries*

It certainly cannot be doubted that Congress may validly pass laws regulating one industry

and not another without violating the Due Process Clause. The Federal Communications Act itself, apart from Section 506, is an example of that. Citations are hardly necessary to support so familiar a proposition. Both federal and state statute books are filled with laws which deal with particular industries. In upholding the power of a State to differentiate between different types of insurance companies, this Court said (*Carroll* v. *Greenwich Insurance Co.*, 199 U. S. 401, 411):

> * * * Again, if an evil is specially experienced in a particular branch of business, the Constitution embodies no prohibition of laws confined to the evil, or doctrinaire requirement that they should be couched in all-embracing terms. It does not forbid the cautious advance, step by step, and the distrust of generalities which sometimes have been the weakness, but often the strength, of English legislation. *Otis* v. *Parker*, 187 U. S. 606, 610, 611. * * *

See also *Metropolitan Casualty Insurance Co.* v. *Brownell*, 294 U. S. 580.[35]

[35] In the *Brownell* case the Court set forth more generally the test to be applied under the Equal Protection Clause as follows (294 U. S., at 584):

"It is a salutary principle of judicial decision, long emphasized and followed by this Court, that the burden of establishing the unconstitutionality of a statute rests on him who assails it, and that courts may not declare a legislative discrimination invalid unless, viewed in the light of facts made

It is clear that Congress had good reason for believing the coercive enforcement of the harmful practices referred to in Section 506 to be especially serious in the broadcasting industry. Although other unions may have so-called featherbedding restrictions, it does not appear that in any similar industry (if there be one) a union is in a position, because of a nation-wide closed shop and a president with completely unfettered powers, to coerce employers to the same extent. Indeed appellee himself has admitted to a congressional committee that his control of the musicians made his position "unique." See p. 17, *supra*.

Nor does it appear that in any other industry a union is seeking to impose restrictions so contrary to the public interest in a non-wasteful use of limited facilities of interstate commerce. Appellee refers only to the motion picture and chain hotel businesses on which the Musicians' Federation itself may be imposing similar burdens. But Congress may have thought that restrictions on those industries are much less harmful to interstate commerce and to the public welfare than in

known or generally assumed, it is of such a character as to preclude the assumption that the classification rests upon some rational basis within the knowledge and experience of the legislators. A statutory discrimination will not be set aside as the denial of equal protection of the laws if any state of facts reasonably may be conceived to justify it. *Rast* v. *Van Deman & Lewis Co.*, 240 U. S. 342, 357; *Tax Commissioners* v. *Jackson*, 283 U. S. 527, 537."

the broadcasting industry, and such a conclusion could not be regarded as arbitrary. It does not appear that Congress was informed that those industries were subjected to coercive monopoly power to the same extent as the broadcasting industry. And in neither of those industries is service to the public limited by the physical factors which have necessitated federal control of radio broadcasting. See *National Broadcasting Co.* v. *United States*, 319 U. S. 190, 213.

C. *The Act is not discriminatory either because it only reaches musicians or because it applies to other types of radio employees as well*

In the court below we thought that appellee was arguing that the Act was invalid because Congress was induced to enact it because of the activities of a single labor organization. Inasmuch as the Act applies to any one who interferes with broadcasting in the ways specified it clearly does not fall in the class of special legislation applicable only to a single person or organization. Cf. *United States* v. *Lovett*, 328 U. S. 303. Its coverage extends beyond musicians (who are not mentioned) to practices by anyone (including other employees) affecting radio licensees.

If a monopoly in restraint of trade existed in only a single industry, Congress could legislate with respect to that industry, and none the less so because it knew that the evils prompting the

legislation had been the work of an identified individual or company to whom the legislation would primarily apply. It would not be bound either to regulate monopoly in other industries where it did not exist or to neglect the single industry in which the public was being damaged. As long as the legislation applies generally to whoever commits a specified offense, there can be no question as to its validity in this respect.

Here Congress was informed that the Federation of Musicians was coercing the broadcasting industry into accepting demands which Congress thought contrary to the public interest. The fact that Congress had this in mind when it passed the law can hardly be of legal consequence. If that were not so the perpetrator of any harmful practice could escape future governmental control if his personal conduct so shocked the legislators as to become responsibe for the enactment of remedial legislation.

In his reply brief below (pp. 32–33) appellee stated that the Government had misunderstood his position on this point. His "actual argument" was that the Act contained an unconstitutional classification because it applied to all broadcasting employees and not merely to the musicians, when the evidence before Congress has shown only the musicians "guilty of any excesses." In other words, the appellee is arguing that the Act may not constitutionally be applied

to the Federation of Musicians, which Congress knew [illegible] engaged in the types of conduct forbidden, because it would also reach other radio employees if they did the same thing.

This argument, we believe, falls from the mere statement. Unquestionably if the Act had in terms applied only to musicians, appellee would be arguing that it was unconstitutional as special discriminatory legislation. Since Congress was wise enough to make the Act sufficiently broad to cover all persons who engaged in the same type of coercion of radio licensees, appellee argues that the Act is void because it is not limited to musicians. If laws violated the Due Process or Equal Protection clauses both because they were and because they were not limited to the precise persons responsible for the evil which Congress was seeking to eliminate, few statutes would be valid. Congress clearly had the right and power to deal with the broadcasting industry as a whole for this purpose.

VI

SECTION 506 (a) (1) IS NOT INVALID FOR INDEFINITENESS

It is clear enough, at least at this time, that a statute may be unconstitutional because it speaks in language too indefinite to be understood.[36] It

[36] It was not so clear a generation ago. In *United States v. Brewer*, 139 U. S. 278, 288 (1891), the Court was content with the simpler proposition that if an act was too vague for a man to know whether or not he violated its prohibition,

cannot exact "obedience to a rule or standard that is so vague and indefinite as to be really no rule or standard at all." *Champlin Refining Co.* v. *Corporation Commission,* 286 U. S. 210, 243. A "statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law." *Connally* v. *General Construction Co.,* 269 U. S. 385, 391.

None would quarrel with these general precepts. On the other hand, it is far from easy to give them definite content or specific application.[37] Their inherent vagueness has not been removed by any crystallized or precisely articulated course of decision in applying these criteria. Since the question is one of due process of law, the ultimate in-

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then he was not within its terms. And in *Lloyd* v. *Dollison,* 194 U. S. 445, 450 (1904), Mr. Justice McKenna, writing for a unanimous Court, indicated a real doubt that the due process clause carried any prohibition against indefiniteness: "If a case can exist in which the kind or degree of power given by a State to its tribunals may become an element of due process under the Fourteenth Amendment, it would have to be a more extreme example than the Ohio statute. * * * Besides, would it not be strange to hold that a statute unaccompanied by a glossary of its terms leaves unfulfilled the legislative power?" Apparently the first explicit recognition by this Court of a constitutional limitation was in *Waters-Pierce Oil Co.* v. *Texas (No. 1),* 212 U. S. 86, 108–111 (1909). Not until *International Harvester Co.* v. *Kentucky,* 234 U. S. 216 (1914), did the Court hold a statute invalid on this ground.

[37] Cf. Note, *Indefinite Criteria of Definiteness in Statutes,* 45 Harv. Law Rev. 160.

quiry is whether the statute offends seriously accepted notions of fair play.

We submit that the provision of the Lea Act making it unlawful for anyone "willfully" to coerce radio licensees "to employ or agree to employ * * * persons in excess of the number of employees needed by such licensee to perform actual services" is sufficiently definite. Certainly it can not be said that such language establishes a standard so vague as to be really no rule or standard at all. Nor, in view of the requirement of willfulness, could this provision punish anyone for conduct which he could not know to be a violation of law.

As we shall show, the district court's holding that this provision is too indefinite is based upon a misconstruction of the statute. In view of this, it is necessary to consider the meaning of Section 506 (a) (1) before endeavoring to determine whether it provides too vague a standard. We submit that if the statutory language is given its ordinary meaning in accordance with its context, its purpose and its legislative history, there can be no problem as to its definiteness.

A. *The meaning of Section 506 (a) (1)*

The evil at which paragraph (a) (1) of the Act was directed appears from the illustrations given in the course of the legislative history of the Act, many of which have already been mentioned (pp.

27–34, *supra*). In the House Committee Report (No. 1508, 79th Cong., 2d sess., p. 5, *infra*, p. 165) and on the floor of Congress (92 Cong. Rec. 1549, 3245) reference was made to appellee's demand that twice as many musicians be employed if the same music was to be broadcast at the same time over standard and frequency modulation outlets. Both in the Committee Report (p. 3, *infra*, p. 161) and on the floor (92 Cong. Rec. 1549–1550, 3250) reference was also made to demands that the large number of "small broadcast stations in the country having no live orchestras would be compelled to employ such orchestras." There was also repeated reference to the demand that "voluntary noncompensated orchestras be barred from broadcasts unless an orchestra of the Federation of Musicians were also employed" or the Union paid an equivalent or greater amount. Report, pp. 3, 5 (*infra*, pp. 161, 165); 92 Cong. Rec. 1543–1544, 1545, 1548, 1550, 1557, 3242.

At the hearings before the House Committee it was brought out that the Federation of Musicians forced the radio stations to agree to expend a fixed percentage of their gross income for staff musicians. 1945 Hearings, p. 69.[35] Network boycotts were threatened to enforce these demands on stations which would not increase their quotas.

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[35] Staff musicians would not include musicians paid by advertisers or advertising agencies. See p. 33, note 17, *supra*.

Id., at 70. The testimony was that the Union sought to justify these quota demands as a means of preventing unemployment, that "there has never been any attempt to gloss over the fact that the imposition of these quotas is a pure 'make-work' project, having no relation to safety, health, working conditions or any incident of employment. It is obvious that these forced quotas are of no benefit to the station or to the public." *Id.*, at 71. Another broadcaster in a statement quoted *supra*, p. 28, declared that the Union representatives had admitted that the station did not need any of the additional musicians demanded. The Committee's attention was also called to the appellee's demands that stations employ musicians exclusively to do nothing but play phonograph records, work which could be and had been done by other employees along with other duties. See pp. 29–31, *supra*.

These examples illustrate the practices against which Paragraph (a) (1) of the Act was directed. They all have in common a complete lack of relation between the demands and the working conditions of the persons actually employed by the licensee, and an avowed and open disregard for whether the persons required to be employed were needed by the employer. Indeed, in every example given it is obvious that they were not.

The illustrations also make clear what the Act

was not intended to reach—*bona fide* disputes as to conditions of employment, including such matters as hours of work and whether additional workers might be required to prevent employees from working too hard. At no time did anyone suggest that the Act dealt with such matters. On the contrary, it affirmatively appears that the Act was not intended to reach such situations.

The House Committee Report (p. 6, *infra*, p. 167) declares in a passage quoted several times on the floor of Congress (92 Cong. Rec. 1550, 1559, 3241, 3248) that subsection (a) "will place no limitation whatever on the use of strikes for the accomplishment of legitimate objectives, such as wage increases or *better working conditions*". [Italics supplied.] Representative Lea, when asked about a broadcaster who wanted only six employees when he actually needed eight, stated "if a union wanted to strike because of working conditions or a hardship that comes to a particular member, it has a right to strike on that ground" (92 Cong. Rec. 1549). Again, Senator Austin of the Conference Committee stated to the Senate that "there may be a strike for a new contract with reference to wages, with reference to *hours*, or with reference to anything else except those things which are denounced because they have been proven through experience as being a type of tyranny which

others should not suffer". *Id.*, at 3248. [Italics supplied.] Senator Tunnell, also of the Conference Committee, subsequently stated that "I do not believe that the bill reaches those on whose behalf Senators are solicitous. I do not believe that any injustice will be done. I know that such is not the intention. There is no intention to reach the innocent." *Id.*, at 3251. Senator White of the Conference Committee stated, in answer to Senator O'Mahoney's inquiry as the right of three artists who thought the burden of work on them was too heavy and that five persons were needed to carry on the program (92 Cong. Rec. 3257):

> I think the first obligation of everyone concerned would be to negotiate and see if they could, by discussion and by concession, reach an agreement. If they could not and they arrived at an impasse, I think the employees could strike if they wished to do so. If they walked out, I think they would be doing something legal.

The Committee Report (pp. 1, 2, 3, 4, 5, *infra*, pp. 158–166) and the debates (92 Cong. Rec. 1549, 1550, 1556, 2822, 3242) repeatedly refer to the "extortionate" nature of the demands at which the bill was directed. The Report (p. 4, *infra*, pp. 162–163) states in this connection:

> The perpetration of the offenses penalized by this bill involve moral turpitude akin to that of larceny, embezzlement, the

> acquisition of another's property by false pretenses, racketeering, and extortion. They are not within the legitimate activities of any organized association of individuals for the cooperative purpose of their accomplishment.

Such language plainly shows that the bill was not intended to apply to mere differences of opinion as to whether men were overworked; it only fits deliberate demands for payment to additional employees made in complete disregard for the employer's need and without any justification from the viewpoint of actually getting the employer's business done. As we have seen that was the only kind of case the sponsors of the Act had in mind.

Additional proof of this is found in the Act itself. Paragraph (1) of subsection (a) is only one of a series of paragraphs aimed at the same sort of featherbedding demands. Paragraph (2) prohibits coercion of a licensee to pay "in lieu of giving, or on account of failure to give employment" to persons in excess of the number needed for actual services. Paragraph (3) relates to paying more than once for the same services. Paragraph (4) deals with paying for services not to be performed. Paragraphs (2), (3) and (4) thus are concerned with demands either for payment for work not done, or for paying more than once for work only performed

once. Paragraph (1) clearly deals with the same kind of demand, a slightly different method of collecting payment more than once for the same work. If Paragraph (1) is read in its context, along with the succeeding paragraphs, it is clear what Congress was driving at when it characterized the Act as one to prevent extortion, as distinct from *bona fide* demands relating to conditions of employment.

We think the construction we have suggested is the normal meaning which would be drawn from the words of paragraph (a) (1) "in excess of the number of employees needed by such licensee to perform actual services." But if there should be any doubt as to what the Act was meant to reach, it would be resolved by the provision in paragraph (d) punishing only those who violate the statute "willfully". Although this Court has said that "willful" may have different meanings, customarily in criminal statutes it requires a deliberate intention to do what the statute forbids, or what amounts to the same thing, "reckless disregard" (*Screws* v. *United States*, 325 U. S. 91, 103–104, 130) for what the law provides. As this Court has said in several cases, although sometimes willful "denotes an act which is intentional rather than accidental * * * when used in a criminal statute it generally means an act done with

a bad purpose". *Screws* v. *United States*, 325 U. S. 91, 101, and cases cited; *United States* v. *Murdock*, 290 U. S. 389, 394. "An evil motive to accomplish that which the statute condemns becomes a constituent element of the crime." (*Screws* v. *United States*, at 101). The Court stated in *Hartzel* v. *United States*, 322 U. S. 680, 686, that the word "willful" must be taken to mean "deliberately and with a specific purpose to do the acts prescribed by Congress". In *United States* v. *Illinois Central R. Co.*, 303 U. S. 239, 243, "willfully" was said to describe the attitude of one "who, having a free will or choice, either intentionally disregards the statute or is plainly indifferent to its requirements."

A "bad purpose" or evil motive does not mean that a defendant must himself believe his conduct to be evil, but merely that he intends deliberately to disregard what the law prohibits. It is, of course, immaterial that a defendant may disagree with the judgment of Congress as to whether conduct declared to be unlawful is bad or wrongful.[39] We believe that to violate the statute here involved a defendant must know that he is demanding the employment of persons not needed or act

[39] A belief on the part of a union official that it was desirable and good to put unemployed persons to work without regard for the employer's need would not negative the necessary scienter, if he intended to coerce the employer to hire persons whom he knew not to be needed.

in complete disregard of the licensee's needs.[*]

This is what we think "willfully" was clearly intended to mean in the statute here involved. Representative Lea stated in the House that the bill would only apply to a person who "actually participates in the willfull purpose". 92 Cong. Rec. 1562. And to make sure that his colleagues would know what he meant, he went on to state: "That is the general rule of criminal law", *Ibid.* Senator Johnson, who was in charge of the bill in the Senate, referred to the willfulness provision as "very important". *Id.*, at 3250. And Senator Austin, of the Conference Committee, calling specific attention to the requirement of willfulness in the penalty section of the Act, said that "it can be seen that the prosecutor

[*] It is immaterial, insofar as the question of definiteness is concerned, whether a defendant must know that his conduct is in violation of the statute or merely that the number of employees which he is forcing upon a licensee is more than are needed to perform actual services (the latter, of course, being included within the former). In either event there can be no ground for complaint that the phrase "number needed" is not sufficiently definite to apprise him of the nature of the conduct declared unlawful—and that is the only question of indefiniteness which has been raised. Normally if a defendant deliberately engages in illegal conduct, the need for *scienter* is satisfied whether or not he is familiar with the statute making what he is doing illegal. But inasmuch as the persons who would be likely to violate the Lea Act would probably not be ignorant of its provisions, the difference is not of great consequence insofar as this case is concerned. Appellee undoubtedly will not contend that he was not aware of the statute.

would be required, in such a prosecution, to show that there was such a violation as was willfully intended to cut across the policy of the law". *Id.*, at 3249.[41]

The repeated characterization of the crime described in the statute as extortion (the Committee Report also referred to larceny, embezzlement, and false pretenses) and immoral further confirms the view that only deliberate violations were prohibited. Only such conduct could arouse such legislative indignation. Each of the offenses Congress thought comparable clearly contains *scienter*, a deliberately wrongful intention, as an essential ingredient.

If it be thought that the purpose and history of the Act leave the meaning of "willfully" in doubt, and that the point is material to the question of constitutionality, the word should be given the construction which will most clearly sustain the Act's constitutionality, *i. e.*, the requirement

[41] Subsequently Senator Austin stated, first, that "the fact, in every case, depends on intent", and second, that the employees' "good faith" had nothing to do with the matter if in fact they were demanding the employment of more persons than are needed. 92 Cong. Rec. 3257. His remarks on this point do not seem entirely consistent. But the statement quoted in the text is the only one directed to defining the requirement of willfulness. Since it deals with the point specifically, and is consistent with the statement of Representative Lea, for whom the bill is named and who sponsored it in the House, and with many other indicia of legislative intention to which we have already made reference, we think that statement a more accurate reflection of the intention of Congress on the point.

of a deliberate violation. Courts will construe statutes so as to avoid constitutional doubts, to save rather than to destroy. *United States* v. *Delaware & Hudson Co.*, 213 U. S. 366; *The Abby Dodge*, 223 U. S. 166; *St. Louis, S. W. Ry.* v. *Arkansas*, 235 U. S. 350; *Crowell* v. *Benson*, 285 U. S. 22; *Wright* v. *Vinton Branch Bank*, 300 U. S. 440; *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1; *Screws* v. *United States*, 325 U. S. 91, 105.

B. *In holding that the Act was indefinite because it allowed the employer to determine the number of employees needed, the court below misconstrued the statute*

The decision below that paragraph (a) (1) was too indefinite was based on the assumption that the number of employees needed was "established by the licensee without prior knowledge upon the part of the person subjected to prosecution" (R. 5), and that a person's "guilt or innocence" should not be "subject wholly to the whim of others" (R. 5).

But that is not what this Act means. It does not allow the determination of the number of employees needed to be established subjectively by the licensee. The bill was amended to avoid that very difficulty. As originally reported to the House by the Committee on Interstate and Foreign Commerce, paragraph (a) (1) made it unlawful to coerce a radio licensee "to employ

* * * persons in excess of the number of employees *wanted* by such licensee.". (Italics supplied.) This provision was criticized on the ground that it would permit an employee to overburden his employees and prevent them from seeking to induce him to lighten their burdens by increasing the size of the working force (92 Cong. Rec. 1546). Subsequently, Representative Holifield, not a member of the Committee, offered an amendment, which would strike the words "wanted by such licensee", and substitute "needed by such licensee to perform actual services" (92 Cong. Rec. 1564). The amendment was immediately accepted by the Committee, and agreed to by the House without debate (*ibid*)—obviously because it more accurately expressed the thought which the Committee originally intended. The bill as modified was accepted by the Conference Committee. During the debate in the Senate on the Conference Report, Senator Johnson, in charge of the measure, stated flatly that it was not the radio station which determined the number needed. (92 Cong. Rec. 3245, 3256). He then went on to refer to the change in the language as follows (*id.*, at 3245):

> I think it should be said in connection with what the Senator from Vermont has already so well stated, that while the bill was being considered in the House the word

was changed from employee "wanted" to employees "needed." That is a very important change. But that change was made, and the conference report and the measure now contain the word employees that are "needed"; not employees that are wanted, but employees that are needed.

The change from "wanted" to "needed" shows that the employees or their representatives are not bound by the decision of the licensee as to how many persons he desires to employ, as long as their demands are related to the necessities of the licensee's business.

And it is important to note that in the provision as amended "number of employees needed" does not stand alone. It is modified and limited by the phrase "to perform actual services".

The Act assumes that the licensee-employer has the right to determine what services he wishes his business to render and his employees to perform. This is the normal prerogative of an employer. The services actually rendered by an employer, for which he requires employees, are usually known by those interested in working for him or are readily ascertainable by those familiar with the industry—and this Act would not be likely to affect anyone else. The number of employees needed to perform such actual services thus would not be a vague or elusive concept. The number would be determined by taking into account the custom of the industry and of industry and labor

generally as to working hours, the nature and difficulty of particular jobs, and common experience as to how many persons are necessary to perform them.

C. *Section 506 (a) (1) is sufficiently definite*

The Lea Act, we submit, is clearly constitutional in the light of these criteria. Despite the possibility of borderline cases (as to which see pp. 127–130, *infra*), there can be no question that in the type of case Congress intended the statute to reach a defendant would know that he was forcing upon an employer more employees than were needed. No one could claim in good faith, for example, that twice as many musicians were needed to broadcast simultaneously on standard wave lengths and on frequency modulation as on the former alone; all that is needed is two microphones and two transmitters. No one could claim in good faith that a station needed a number of musicians to act exclusively as platter turners, that is to put on and take off phonograph records, if announcers and other technicians can perform without hardship this simple operation in a few seconds per program along with their other duties. In these and other cases which Congress had in mind, the union has paid no attention to the employer's needs. It treated that as irrelevant, and was concerned entirely with what it regarded as its own interest in securing employment for its members. If a defendant makes that the criterion, irrespective of the need of the employer, he is deliberately and

knowingly—that is, willfully—violating the statutory mandate, and cannot pretend that the statute is too indefinite for him to know that his conduct is unlawful.

It thus cannot be said that Section 506 (a) (1) establishes a standard which the ordinary person cannot understand or that it subjects him to the danger of trial for an offense so vaguely defined as to give him no warning.

The Act, is, we think, at least as definite as others which have been upheld by this Court. In *Nash* v. *United States*, 229 U. S. 373, the Court held that the test of "unreasonable restraint of trade" in the Sherman Act was sufficiently definite.

In *United States* v. *Ragen*, 314 U. S. 513, "reasonable allowance for salaries or other compensation for personal services actually rendered" was held to be a valid standard, as long as *scienter* was an element of the offense. The Court there noted that "the jury would have had to consider whether or not the 'commissions' had intentionally been made excessive" (p. 520), a process not in substance differing from determining whether the number of employees demanded is excessive. The opinion states that (p. 523) "The mere fact that a penal statute is so framed as to require a jury upon occasion to determine a question of reasonableness is not sufficient to make it too vague to afford a practical guide to permissible conduct. Cf. *Nash* v. *United States*, 229 U. S. 373."

In *Kay* v. *United States*, 303 U. S. 1, 9, the Court upheld a statute punishing persons soliciting fees "except ordinary charges authorized * * * for services actually rendered for examination and perfecting of title, appraisal, and like necessary services." The last phrase, which on its face resembles that in question here, was held to draw meaning from its context and therefore to be sufficiently definite. Any doubts as to the meaning of paragraph (a) (1) can also be resolved by reference to its context in the statute.

Other cases which contain language no more definite than that here involved are. *Screws* v. *United States*, 325 U. S. 91; *Gorin* v. *United States*, 312 U. S. 19 (connected with the national defense); *Old Dearborn Distributing Co.* v. *Seagram Corp.*, 299 U. S. 183, 196 (fair and open competition); *Bandini Co.* v. *Superior Court*, 284 U. S. 8, 18 (unreasonable waste of natural gas); *United States* v. *Alford*, 274 U. S. 264, 267 (near any forest or other inflammable material); *Miller* v. *Oregon*, 273 U. S. 657, as explained at 274 U. S., at 464–465 (dangerous rate of speed); *Omaechevarria* v. *Idaho*, 246 U. S. 343 (range usually occupied by any cattle grower); *Fox* v. *Washington*, 236 U. S. 273, 277 (or which shall tend to encourage or advocate disrespect for law or for any court). Additional cases are listed in *Gorin* v. *United States*, 312 U. S. 19, at 27.

The expression "needed to perform actual services" seems more definite than criteria modified by the adjectives "reasonable" or "unreasonable". Moreover, "needed" is clearly akin to "necessary", a phrase frequently used both at statutory and common law. An ingredient of a violation of the Fair Labor Standards Act is that work be "necessary to the production of goods for commerce". Cf. *Armour & Co.* v. *Wantock*, 323 U. S. 126, 129. Many States have or have had statutes forbidding all labor or business on the Sabbath except works of necessity. *Powhatan Steamboat Co.* v. *Appomattox R. R. Co.*, 24 How. 247; *Francisco* v. *Commonwealth*, 180 Va. 371, 23 S. E. 2d 234, 239 (1942);[4] Wharton, *Criminal Law* (12 Ed. 1932) Sec. 1700; 29 A. L. R. 1298. So far as can be ascertained, none of these statutes has ever been held unconstitutional on the ground of indefiniteness. At common law, guilt of crime often turns on whether otherwise criminal acts were necessary in the circumstances. Wharton *Cr. Law* (12th Ed. 1932) sec. 126 *et seq.* Thus,

[4] In this case the question was whether the sale of beer on Sunday was a work of necessity. It was held that this was a question of fact for the jury. The court based its opinion on the ground that the meaning of the word "necessary" differs according to time, place and circumstances. Consequently, it ordered that the jury be charged that necessary work was "all work reasonably essential to the economic, social and moral welfare of the community." Despite the flexible definition approved by the court, neither court nor counsel raised any question as to the sufficiency of the standard for the purpose of defining a crime.

when the defense of self-defense is raised in a prosecution for murder, the jury determines whether a necessity to take life existed. Wharton *Cr. Evidance* (11th Ed. 1935) sec. 322.

Appellee may seek to distinguish the *Nash* and *Ragen* cases on the ground that the expression in the Sherman Act had a well-settled meaning at common law, and that that involved in the tax case was "of long standing". But conceding this, and taking these factors into account, we believe that those statutes furnished no surer guide to their meaning in particular situations than the phrase involved here. That is the controlling factor, not the age of a statute or rule when it first is challenged in this Court.

We recognize that the process of matching words and phrases in statutes in order to determine whether one is as definite as another is difficult, and that the question in each case must ultimately be one of judgment based largely on the context of the particular law and the subject with which it deals. But the cases viewed as a whole contain several underlying principles, which we think point the way to a correct decision here if it is thought that the text of the law itself is not sufficiently definite.

D. *Scienter or Willfulness*

Of greatest importance is the significance which this Court has properly attached to the existence of a requirement of *scienter*. In no case in which

scienter was clearly made an element of the offense has the Court held a statute invalid for indefiniteness.[43] And, conversely, in a number of cases the Court has clearly indicated that the presence of such a requirement removes any question as to an act's validity. *United States* v. *Ragen*, 314 U. S. 513, 523–524; *Gorin* v. *United States*, 312 U. S. 19, 27–28; *Screws* v. *United States*, 325 U. S. 91, 101–105; *Omaechevarria* v. *Idaho*, 246 U. S. 343, 348; *Hygrade Provi-*

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[43] Section 4 of the Lever Act was held invalid in *United States* v. *Cohen Grocery Co.*, 255 U. S. 81; *Weeds, Inc.* v. *United States*, 255 U. S. 109; *Small Co.* v. *American Sugar Ref. Co.*, 267 U. S. 233. The statute as quoted in 255 U. S. at 86 reads as though intent were required. But the full text of the Section, as set out in 255 U. S. at 81–82, shows that intent was no part of the clauses under attack.

The accumulation of statutes held invalid in *International Harvester Co.* v. *Kentucky*, 234 U. S. 216, and *Collins* v. *Kentucky*, 234 U. S. 634, was construed by the state court to make unlawful any combination "for the purposes *or with the effect* of fixing a price that was greater or less than the real value of the article" (234 U. S. at 221). [Italics added.]

The statute condemned in *Herndon* v. *Lowry*, 301 U. S. 242, did not in terms require intent, but, as construed by the state court, punished the attempt to incite insurrection, if force was contemplated by the inciter "at any time within which he might reasonably expect his influence to continue" (301 U. S. at 254–255). The statute as thus construed might be thought to require either (1) an intent to stimulate force and violence, or (2) an intent to utter words which "might, at some time in the indefinite future" (301 U. S. at 262), lead to force and violence. It is clear that this Court adopted the latter construction, and thus assumed that the statute reached a person, "however peaceful his own intent" (301 U. S. at 262).

sion Co. v. *Sherman*, 266 U. S. 497, 502–503. This line of demarcation is entirely reasonable. "The constitutional vice" in an indefinite statute "is the essential injustice to the accused of placing him on trial for an offense, the nature of which the statute does not define and hence of which it gives no warning. See *United States* v. *Cohen Grocery Co., supra.* But where the punishment imposed is only for an act knowingly done with the purpose of doing that which the statute prohibits, the accused cannot be said to suffer from lack of warning or knowledge that the act which he does is a violation of law. The requirement that the act must be willful or purposeful may not render certain, for all purposes, a statutory definition of the crime which is in some respects uncertain. But it does relieve the statute of the objection that it punishes without warning an offense of which the accused was unaware." *Screws* v. *United States*, 325 U. S. at 101–102. In *United States* v. *Ragen*, 314 U. S., at 524, the Court said with respect to a similar statutory provision: "On no construction can the statutory provisions here involved become a trap for those who act in good faith. A mind intent upon willful evasion is inconsistent with surprised innocence."

The same reasoning, we believe, applies to the Lea Act. That Act, as we have explained, applies only where there has been a deliberate violation

with an intention to do the acts proscribed by Congress or an utter or reckless disregard for the congressional mandate. See pp. 104–118, *supra*. Here too an act cannot "become a trap for those who act in good faith."

We do not suggest that the presence of a requirement as to willfulness will without more be sufficient in a statute to satisfy the Due Process Clause. See *Screws* v. *United States*, 325 U. S., at 103, 105, 151–153. In the *Screws* case the Court divided as to whether the statute there involved was of that sort. But that statute was an exceptional one. The opinion of Mr. Justice Douglas sustains it both because of the necessity of *scienter* and because it would be known to be applicable to the extent that the constitutional rights therein referred to had been "made definite by decision or other rule of law" (p. 103). Here we have no language anything like as general as "deprivation of any rights, privileges, or immunities secured or protected by the Constitution and laws of the United States". Here we have a test, which, like that in the *Ragen* and *Omachevarria* cases, has a meaning which even apart from *scienter*. the normal person—and certainly persons familiar with the industry affected—would understand and have no difficulty in applying except in the inevitable borderline cases. The area of certainty as to the statute's application covers all the illustrative situations presented to the Con-

gress and heretofore discussed. These are reached upon the basis of the language of the statute itself, without the need for resort to external decisions and rules such as was called for in the *Screws* case because of the lack of definition in the statutory language. This area of certainty serves the same purpose in much more comprehensible and orthodox form as those external aids.

As in these decisions other than the *Screws* case in which *scienter* was thought to overcome any doubts as to indefiniteness, there is here, at worst, a phrase of reasonably specific meaning but as to the precise bounds of which a person might have doubts. The necessity of a willful violation serves to remove the danger of a person inadvertently involving himself within the border area. For this reason we think that any doubt as to the specificity of the statutory language must be resolved in the Act's favor by reason of the requirement of willfulness construed as we have suggested.

E. *The necessity for a general standard*

We think it also important that Congress could not have accomplished its aim of freeing interstate radio broadcasting from the injury caused by this type of featherbedding if the language used in the Act is not sufficiently precise. The evil at which Congress was aiming was clear,

and the language of the Act covers it. In order to wipe out practices which it reasonably regarded as harmful to the public interest, Congress had the alternatives of setting forth a general rule or of itself prescribing the number of employees which employers could be forced to hire.

In view of the great number of diverse situations which Congress wished the Act to reach, the latter choice was obviously impossible. Thus unless some generalized method of statement was sufficient, Congress would be unable to penalize those who coerce broadcasters to hire unneeded personnel.

This Court has recognized that the ideal of complete specificity must yield to the practical requirements of legislation. In *Miller* v. *Strahl*, 239 U. S. 426, 434, it said:

> Rules of conduct must necessarily be expressed in general terms and depend for their application upon circumstances, and circumstances vary. * * *

See, also, *Bandini Co.* v. *Superior Court*, 284 U. S. 8, 18; *Miller* v. *Oregon*, 273 U. S. 657 (discussed in 274 U. S. at 464–465); *Mulkern* v. *State*, 176 Wis. 490, 493, 187 N. W. 190 (1922). We submit that the language employed by Congress is as specific as the nature of the problem permits, and that this is a strong factor weighing in favor of the Act's constitutionality.

F. *The possible existence of borderline cases does not make a law unconstitutionally indefinite*

There may, of course, be cases in which there could be a reasonable dispute as to how many workers are needed to perform services, and in which employees may have basis for claiming that their hours are too long or that the work burden on them is so great as to require additional help. But those were not the cases which Congress meant this statute to reach, as we have demonstrated, *supra*, pp. 104–113. Such cases of *bona fide* dispute, in which employees or their representatives were really concerned as to working conditions of the employees, thus would not come within the statutory provision.

Furthermore, as this Court has several times noted (even in a case involving the death penalty), "in most English words and phrases there lurk uncertainties." *Robinson* v. *United States*, 324 U. S. 282, 286. "'Whenever the law draws a line there will be cases very near each other on opposite sides. The precise course of the line may be uncertain, but no one can come near it without knowing that he does so, if he thinks, and if he does so it is familiar to the criminal law to make him take the risk. *Nash* v. *United States*, 229 U. S. 373.'" "* * * we imagine that no one not in search of trouble would feel any." *United States* v. *Wurzbach*, 280 U. S. 396, 399.

Clearly the fact that there may be doubtful cases does not render a statute unconstitutionally indefinite. Men ordinarily speak in words which lack a mechanical precision of denotation. There will be found around almost every statute an inevitable fringe of uncertainty and doubt. This periphery of indefiniteness may be more extensive in some cases than in others but its existence is ordinarily inescapable.

A statute will therefore not be found constitutionally indefinite because of the possibility of doubt in peripheral cases. If there is a hard core of circumstances to which a statute will unquestionably apply, as to which the ordinary person would have no doubt as to its application, and if this constitutes the mass of situations with which the act deals, constitutional requirements are fulfilled. Such a statute would not contravene the notion of fair dealing embodied in the Due Process Clause. Even apart from the additional protection afforded by the requirement of willfulness, Section 506(a)(1) is such a law.

Appellee has referred to statements in the Congressional debates by Senator Johnson that the district attorney (92 Cong. Rec. 3245) and the court (*id.*, at 3256) determine whether the number of employees demanded is in excess of the number needed.[a] As in any case, under this stat-

[a] Senator White stated on one occasion that the employer made the determination. 92 Cong. Rec. 3256. This was obviously wrong (see pp. 114–116, *supra*), and was immediately corrected by Senator Johnson.

ute no person can be convicted unless the prosecuting attorney first determines that in his opinion the Act is violated, and unless the court, (including the jury) ultimately agrees. Under paragraph (a) (1) of the Act the prosecutor and the court must be satisfied that a defendant is seeking to force the employment of more employees than are needed for actual services, and also that the demand was willfully made,—that is that the defendant either knew that the employees were not needed or did not care whether they were or not. Senator Johnson's remarks, which were addressed to the first of these statutory requisites, mean no more than that.[*]

This Court has not held that, merely because questions of statutory application must be passed on by a court of jury, with the inevitable uncertainties of litigation, a statute was unconstitutional. Such a test would condemn almost every law. In *United States* v. *Ragen*, 314 U. S. 513 it could equally as well have been said that a person making an income tax deduction was gambling as to whether a prosecutor, judge or

[*] Senator Johnson also stated, perhaps over-optimistically (92 Cong. Rec. 3246):

"* * * I do not think it will call for any court interpretations, because the language is so plain that I do not believe it will ever reach the courts. But if by any chance the parties should go to the courts, that is where the final decision would be made."

jury might later find it unreasonable. As Mr. Justice Holmes declared for the Court in *Nash* v. *United States*, 229 U. S. 373, 377:

> * * * the law is full of instances where a man's fate depends on his estimating rightly, that is, as the jury subsequently estimates it, some matter of degree. If his judgment is wrong, not only may he incur a fine or a short imprisonment, as here; he may incur the penalty of death. * * *

Subsequently in *International Harvester Co.* v. *Kentucky*, 234 U. S. 216, 223, the Court, again speaking through Mr. Justice Holmes, stated that "the reason" for holding the statute unconstitutionally indefinite:

> * * * is not the general uncertainties of a jury trial but that the elements necessary to determine the imaginary ideal are uncertain both in nature and degree of effect to the acutest commercial mind.

Here we have no "imaginary ideal", but an expression which has a clear and definite meaning, although, as with every other statutory expression, there may be room for difficult cases on the borderline. But a defendant would not be prejudiced by any such difficulty in determining the number needed under this statute in view of the additional requirement that penalties can not be imposed unless his conduct is also willful.

G. Since this case clearly falls within the statutory prohibition appellee has no standing to contend that the Act is too indefinite

We submit further that appellee has no standing to raise the issue of indefiniteness. The information alleges that he willfully sought to coerce Station WAAF to employ three persons not needed for the performance of actual services. It must be assumed here that the Government can substantiate this charge and that the case therefore presents a situation in which there can be no doubt that the Act has been violated.

In *Robinson* v. *United States*, 324 U. S. 282, 286, the Court said in a case in which the conduct of the defendant was found clearly to come within the statute:[46]

> * * * We do not know what provision of law, Constitutional or statutory, gives us power wholly to nullify the clearly expressed purpose of Congress to authorize the death penalty because of a doubt as to the precise congressional purpose in regard to hypothetical cases that may never arise.

[46] In the *Robinson* case there had been a trial and it was clear from the facts of the particular case that the statute had been violated. In the present case there has been no trial since the court below sustained appellee's motion to dismiss the information. But the Government should not be prejudiced by the fact that it has not yet been able to prove its allegations. Since they are to be accepted as true on the motion to dismiss, the case must be regarded as in the same posture as if the Government had proved them.

See also *Fox* v. *Washington*, 236 U. S. 273, 277; *Miller* v. *Strahl*, 239 U. S. 426, 432–433; *United States* v. *Wurzbach*, 280 U. S. 396, 399. In the *Fox* case the Court said (p. 277):

> If the statute should be construed as going no farther than it is necessary to go in order to bring the defendant within it, there is no trouble with it for want of definiteness.

These rulings are in accordance with the principal that a litigant can challenge the validity of an act only when it is applied to his own disadvantage. *Yazoo & Mississippi Ry. Co.* v. *Jackson Vinegar Co.*, 226 U. S. 217, 219; *Premier-Pabst Sales Co.* v. *Grosscup*, 298 U. S. 226; *Kuehner* v. *Irving Trust Co.*, 299 U. S. 445, 455; *Bourjois, Inc.* v. *Chapman*, 301 U. S. 183. A statute may be invalid as applied to one set of facts and valid as applied to another. *St. Louis, Iron Mountain & Southern Ry. Co.* v. *Wynne*, 224 U. S. 354; *Kansas City Southern Ry. Co.* v. *Anderson*, 233 U. S. 325; *Poindexter* v. *Greenhow*, 114 U. S. 270, 295. See pp. 135, *et seq.*, *infra*. We submit that these established principles of constitutional litigation are equally applicable in the case of a statute challenged as too indefinite.

VII

THE ISSUES IN THIS CASE RELATE TO THE VALIDITY OF THE LEA ACT WITH RESPECT TO THE FACTS ALLEGED IN THE INFORMATION

In the preceding argument we have assumed that this case involves only the portion of the statute upon which the information rests, and that the Court would not concern itself with any but the precise facts charged in the present information. In *United Public Workers* v. *Mitchell*, No. 20, decided February 10, 1947, slip sheet, p. 13, this Court has recently reaffirmed its "'considered practice not to decide abstract, hypothetical or contingent questions, or to decide any constitutional question in advance of the necessity for its decision, or to formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied, or to decide any constitutional question except with reference to the particular facts to which it is to be applied, . . .' *Alabama State Federation of Labor* v. *McAdory*, 325 U. S. 450, 461, and cases cited. See *Alma Motor Co.* v. *Timken-Detroit Axle Co.*, No. 11, October Term, 1946, decided December 9, 1946."

In the *McAdory* case the Court further stated (325 U. S. at 462):

> A law which is constitutional as applied in one manner may, it is true, violate the Constitution when applied in another.

Field v. *Clark*, 143 U. S. 649, 694–7; *Dahnke-Walker Co.* v. *Bondurant*, 257 U. S. 282, 289; *Concordia Ins. Co.* v. *Illinois*, 292 U. S. 535; *Associated Press* v. *Labor Board*, 301 U. S. 103. But "Since all contingencies of attempted enforcement cannot be envisioned in advance of those applications" this Court has felt bound to delay passing on "the constitutionality of all the separate phases of a comprehensive statute until faced with cases involving particular provisions as specifically applied to persons who claim to be injured." *Watson* v. *Buck*, 313 U. S. 387, 402. * * *

The only basis for a departure from these long recognized principles which appellee urges is that Section 506 is inseparable, so that if any provision or application of it is invalid the entire section must fall. We do not believe that any provision or application of the Lea Act is unconstitutional. Nevertheless, since this brief is directed in the main to what we conceive to be properly before the Court in this case, and since we think appellee clearly wrong in his theory as to the scope of the issues, it seems advisable to meet his argument. Appellee has raised this point primarily in answer to our suggestion that since the information alleges only that appellee has caused and directed others to refrain from

working, it does not present any question as to the right to strike.[*]

It is apparently appellee's position that if any application of the statute might be unconstitutional, the entire law must fall. As this Court said of a similar argument, also based upon a claim that the First Amendment was violated: "It seeks to bar all regulation by contending that regulation in a situation not presented would be invalid. Courts deal with cases upon the basis of the facts disclosed, never with nonexistent and assumed circumstances." *Associated Press* v. *National Labor Relations Board*, 301 U. S. 103, 132; see also *Crowell* v. *Benson*, 285 U. S. 22, 62; *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 30; *United Public Workers, et al.* v. *Mitchell*, No. 20, October Term, 1946, decided February 10, 1947, slip sheet, p. 13).

A. CONGRESS INTENDED THE ACT TO STAND INSOFAR AS WAS POSSIBLE, AND THE ACT IS SEVERABLE

There can be no question both that the Lea Act can without difficulty be applied to those factual situations which validly come within it, and that Congress intended it to stand insofar as it possibly could. This suffices to make the Act sepa-

[*] In Point III B, *supra*, pp. 47–68, we have argued that in any event the Act does not violate any constitutional guarantee with respect to the right to strike.

rable under the commonly accepted rule as to separability. *Dorchy* v. *Kansas*, 264 U. S. 286, 289–290; *Williams* v. *Standard Oil Co.*, 278 U. S. 235, 241; *Champlin Refining Co.* v. *Corporation Commission*, 286 U. S. 210, 234; *Warren* v. *Mayor of Charlestown*, 2 Gray 84 (Mass., 1854). Or as the Court stated in *Jaehne* v. *New York*, 128 U. S. 189, 194, citing Cooley, *Constitutional Limitations:*

> * * * The rule upon this subject, which we consider applicable, is that "a legislative act may be entirely valid as to some classes of cases and clearly void as to others. * * * but such invalidity would not affect the operation of the law in regard to the cases which were within the legislative control."

See also *The Abby Dodge*, 223 U. S. 166; *In re Chapman*, 166 U. S. 661; *Louisville, N. O. & Texas Ry. Co.* v. *Mississippi*, 133 U. S. 587; *Eilenbecker* v. *Plymouth County*, 134 U. S. 31; *In re Rahrer*, 140 U. S. 545, 563; *Smiley* v. *Kansas*, 196 U. S. 447; *Rearick* v. *Pennsylvania*, 203 U. S. 507.

Clearly here it is possible for the Lea Act to operate insofar as it may be given constitutional application. There is no reason why all valid applications of Section 506 may not be given legal effect by themselves. If we assume, *arguendo*, an inability to apply the Act's prohibitions to certain sets of facts, this would in no way impede or otherwise affect the application of the statute to

other sets of facts. If the Act is ever sought to be applied invalidly, all constitutional rights involved will be adequately safeguarded by the courts when such a case arises.

Nor can there be any dispute as to the intention of Congress in view of the background and stated purposes of the present Act. Congress sought to stamp out the use of coercion to compel broadcasters to succumb to types of demands which Congress thought were illegitimate and contrary to the public interest. It forbade coercion "by the use or expressed or implied threat of the use of force, violence, intimidation or duress, or by the use of express or implied threat of the use of other means." Appellee's argument is that if some "means" of coercion may not be constitutionally prohibited, it must be assumed that Congress would have meant the entire Act to fall rather than to have the law stand insofar as means of coercion within the power of Congress are included within the prohibition. The mere statement of the proposition demonstrates the absurdity of attributing to Congress any such intention.

Insofar as the particular point of separability raised by appellee is concerned, the intention of Congress can hardly be disputed. The history of the Act unquestionably demonstrates that it resulted from Petrillo's demands upon the broadcasting industry. H. Rep. 1508, 79th Cong., 2d sess., p. 2, *infra*, p. 160. Such demands are enforce-

able by reason of his power to direct other persons to refrain from working—a power which is clearly not constitutionally protected, as we have shown (pp. 40–46, *supra*), whatever may be said for the right to strike itself. If the statute lawfully prevents this method of coercion to enforce the specified unlawful demands, it is not unlikely that a major portion of its objectives will have been achieved. Congress undoubtedly would have intended the Act to go that far. If it is clear that Congress meant a law to cover the facts presented in a particular case, the Court will not concern itself with whether on other facts the law might be valid. *Robinson* v. *United States*, 234 U. S. 282, 286.

B. THE SEPARABILITY CLAUSE

The test we have applied is controlling whether or not there is a separability clause. See, for example, *Steward Machine Co.* v. *Davis*, 301 U. S. 548, 598, wherein the Court, in affirming separability, stated that "without a severability clause we should still be led to that conclusion." And see cases cited, *infra*, pp. 143–144. Appellee urges, however, that Section 506 contains no separability clause and that certain decisions of the Court say that in the absence of a separability clause it is to be presumed that Congress intends a statute to stand or fall as an entirety. It is our position (1) that Section 506 is part of the Federal Communications Act, which does contain a controlling

separability clause, (2) that, assuming no clause to be applicable, any presumption of inseparability would be rebutted by the obvious intention of Congress in enacting this statute, and (3) that there is no sound basis for the dicta in several decisions to the effect that the absence of a separability clause manifests a congressional intention that a law stand or fall as a unit.

1. *The Federal Communications Act contains a separability clause*

Appellee treats the present statute as if there were no separability clause. It is true that Section 506, as added to the Communications Act in 1946, contains no such clause. But that section is merely an amendment to the Communications Act, as appears clearly from the title and introductory provision. (See p. 153, *infra.*) And Section 608 of that Act, 48 Stat. 1105 (47 U. S. C. 608) contains such a clause for the entire statute. Section 608 states that:

> If any provision of this Act *or the application thereof* to any person or circumstance is held invalid, the remainder of the Act and *the application of such provision to other persons or circumstances* shall not be affected thereby. [Italics supplied]

Clearly, Section 608 applies to the entire Communications Act, including subsequent amendments. In the first place, the section in terms declares that it applies to "any provision of this

Act." And Section 506, like other amendments, is expressly stated to be a part of the Communications Act. It would clearly be impractical, as well as unnecessary, for Congress to have inserted a new separability clause in each of the numerous amendments to the Communications Act since its original enactment in 1934. There was no special reason for its doing so when Section 506 was added to the statute, inasmuch as Congress must be presumed to have been aware of the existence of Section 608.

It is well established as a matter of general law that amendments to a statute are to be treated as a part of the statute and not as entirely separate legislation. In construing any statute, regard must be had not only for all parts of the act itself, but also "to all parts of the act itself, and of any former act of the same law-making power, of which the act in question is an amendment." *United States* v. *Wong Kim Ark*, 169 U. S. 649, 653. The settled rule is that the statute, as amended, is "to be read, as to all subsequent occurrences, as if [it] had originally been in the amended form." *United States* v. *LaFranca*, 282 U. S. 568, 576. Thus, Section 608 was a part of the original act and remains unchanged; and the amendment added by the Lea Act is to be read in connection with Section 608 "as if it were originally incorporated" in the original act. *Pennsylvania Co.* v.

United States, 236 U. S. 351, 362. See also *Blair* v. *Chicago*, 201 U. S. 400, 475, where the Court adopted as correct the rule stated in Endlich on *Statutes*, Section 294, as follows:

> A statute which is amended is thereafter, and as to all acts subsequently done, to be construed as if the amendment had always been there, *and the amendment itself so thoroughly becomes a part of the original statute, that it must be construed in view of the original statute, as it stands after the amendments are introduced.* * * * [Italics added.]

See also *Texas* v. *Eastern Texas R. R. Co.*, 258 U. S. 204, 217; *Steffler* v. *Johnston*, 121 F. 2d 447 (C. C. A. 9), certiorari denied, 314 U. S. 676; *McClure* v. *United States*, 95 F. 2d 744, 750 (C. C. A. 9), affirmed, 305 U. S. 472; *Baxter* v. *McGee*, 82 F. 2d 695, 700 (C. C. A. 8), certiorari denied, 298 U. S. 680; *Balanced Rock Scenic Attractions* v. *Town of Manitou*, 38 F. 2d 28, 29 (C. C. A. 10), certiorari denied, 281 U. S. 764; *Kelleher* v. *French*, 22 F. 2d 341, 347 (W. D. Va.); *Cumberland Telephone & Tel. Co.* v. *City of Memphis*, 200 Fed. 657, 660–661 (C. C. A. 6); *In re Nelson*, 11 F. Supp. 733 (W. D. N. Y.); *United States* v. *Woolsey*, 28 Fed. Cas. No. 16763 (S. D. N. Y.).

If, as we believe, the separability clause in Section 608 is controlling; there is a strong, though not completely irrebuttable, presumption,

that Congress intends the statute to stand to the extent constitutionally possible. As this Court said in *Electric Bond & Share Co.* v. *Securities and Exchange Commission*, 303 U. S. 419, 434:

> Congress has thus said that the statute is not an integrated whole, which as such must be sustained or held invalid. On the contrary, when validity is in question, divisibility and not integration is the guiding principle. Invalid parts are to be excised and the remainder enforced. When we are seeking to ascertain the congressional purpose, we must give heed to this explicit declaration.

See also the statement of Chief Justice Hughes, dissenting with Justices Brandeis, Stone and Cardozo, in *Carter* v. *Carter Coal Co.*, 298 U. S. 238, 322:

> * * * when Congress states that the provisions of the Act are not inseparable and that the invalidity of any provision shall not affect others, we should not hold that the provisions are inseparable unless their nature, by reason of an inextricable tie, demands that conclusion.

2. *Any presumption of inseparability would be rebutted by actual legislative intention*

Even if we assume *arguendo* that the separability clause is not applicable to Section 506, the result will be the same. Although this Court has said in a series of cases beginning with *Williams*

v. *Standard Oil Co.*, 278 U. S. 235,[a] that in the absence of a separability clause there is a presumption of inseparability, such a presumption is by no means conclusive. We cite below forty-seven cases in which this Court has held statutes severable despite the absence of a separability clause.[b]

The basic question is still what would Congress have intended—would it have desired that a statute be applied so far as is constitutionally possible? The considerations set forth above (*supra*, pp. 137–138), are, we think, sufficient to rebut any contrary presumption here. The certainty that Congress would have wanted the Act to go as far as was lawfully possible is clearly sufficient to show that the statute should be construed as separable despite the assumed absence of a separability clause.

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[a] *Utah Power & Light Co.* v. *Pfost*, 286 U. S. 165, 184; *Champlin Refining Co.* v. *Corporation Commission*, 286 U. S. 210, 235; *Railroad Retirement Board* v. *Alton Railroad Co.*, 295 U. S. 330, 362; *Electric Bond & Share Co.* v. *Securities and Exchange Commission*, 303 U. S. 419, 434.

[b] *Steward Machine Co.* v. *Davis*, 301 U. S. 548, quoted *supra*, p. 138; *United States* v. *Delaware & Hudson Co.*, 213 U. S. 366; *Field* v. *Clark*, 143 U. S. 649; *United States* v. *Cox*, 155 U. S. 76; *In re Chapman*, 166 U. S. 661; *New York Central R. R.* v. *United States*, 212 U. S. 481; *El Paso & N. E. Ry.* v. *Gutierrez*, 215 U. S. 87; *Kimmish* v. *Ball*, 129 U. S. 217; *Reagan* v. *Farmers' Loan & Trust Co.*, 154 U. S. 362; *Willcox* v. *Consolidated Gas Co.*, 212 U. S. 19; *Waters-Pierce Oil Co.* v. *Deselms*, 212 U. S. 159; *Southwestern Oil Co.* v. *Texas*, 217 U. S. 114; *Grenada Lumber Co.* v. *Mississippi*, 217 U. S. 433; *Shevlin-Carpenter Co.* v. *Minnesota*, 218 U. S. 57; *Western*

3. *There is no basis for a presumption of inseparability*

Finally, we submit, the rule of *Williams* v. *Standard Oil Co.*, *supra*, that a statute is presumptively inseparable in the absence of a separability clause lacks both a rational and a historical foundation. Although this statement has been repeated in the cases cited above (note 14, p. 143), it has never actually been given effect by the Court, as each of the cases cited involved a statute

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Union Tel. Co. v. *Richmond*, 224 U. S. 160; *Southern Pac. Co.* v. *Campbell*, 230 U. S. 537; *Louisville & Nash. R. R. Co.* v. *Garrett*, 231 U. S. 298; *Grand Trunk Ry.* v. *Michigan R. R. Comm.*, 231 U. S. 457; *St. Louis, S. W. Ry.* v. *Arkansas*, 235 U. S. 350; *Railroad Companies* v. *Schutte*, 103 U. S. 118; *Unity* v. *Burrage*, 103 U. S. 447; *Penniman's Case*, 103 U. S. 714; *Presser* v. *Illinois*, 116 U. S. 252; *McPherson* v. *Blacker*, 146 U. S. 1; *Loeb* v. *Columbia Township Trustees*, 179 U. S. 472; *Carey* v. *South Dakota*, 250 U. S. 118; *International Bridge Co.* v. *New York*, 254 U. S. 126; *Joslin Mfg. Co.* v. *Providence*, 262 U. S. 668; *Tuttle* v. *Lake Erie & W. R. R.*, 175 U. S. 348; *Diamond Glue Co.* v. *United States Glue Co.*, 187 U. S. 611; *Berea College* v. *Kentucky*, 211 U. S. 45; *Tiernan* v. *Rinker*, 102 U. S. 123; *Huntington* v. *Worthen*, 120 U. S. 97; *Jachne* v. *New York*, 128 U. S. 189; *McCullough* v. *Virginia*, 172 U. S. 102; *The Abby Dodge*, 223 U. S. 166; *Missouri Rate Cases*, 230 U. S. 474; *In re Rahrer*, 140 U. S. 545, 563; *Louisville, N. O. & Texas Ry. Co.* v. *Mississippi*, 133 U. S. 587; *Eilenbecker* v. *Plymouth County*, 134 U. S. 31; *Smiley* v. *Kansas*, 196 U. S. 447; *The State Freight Tax Case*, 15 Wall. 232; *Telegraph Co.* v. *Texas*, 105 U. S. 460; *Ratterman* v. *Western Union Tel. Co.*, 127 U. S. 411; *Hatch* v. *Reardon*, 204 U. S. 152; *Singer Sewing Machine Co.* v. *Brickell*, 233 U. S. 304; *Bowman* v. *Continental Oil Co.*, 256 U. S. 642, 646–647.

containing a separability clause. The remarks as to the rule applicable for other types of statutes not before the Court in any of those cases are therefore only dicta.

Since separability is fundamentally a matter of legislative intention, the presumption can have justification only if it reflects the manner in which Congress and other legislatures customarily operate. The presumption that, in the absence of a separability clause, laws are to be presumed incapable of separation can only be defended on the ground that legislatures avail themselves of separability clauses whenever they desire the provisions of a law to be severable, and fail to use the device only because they have a contrary intention. Whether legislatures exercise such nice discrimination is to be doubted. Separability clauses have probably been employed when and because the draftsmen of a statute had doubts as to whether the courts would sustain a law *in toto*. The absence of such doubts, or careless draftsmanship, are more likely than the existence of an intention that the law be treated as inseparable to be responsible for the failure to incorporate such a provision in a statute. The presumption assuming as a fact that legislators omit separability clauses because they intend statutes to fall *in toto* is thus hardly consistent with common knowledge as to the workings of the legislative process.

Historically, the problem was approached in precisely the opposite manner.[50] In the first edition of Judge Cooley's treatise on *Constitutional Limitations;* published in 1868, the author stated (pp. 180–181):

> A legislative act may be entirely valid as to some classes of cases, and clearly void as to others * * *. In any such case the unconstitutional law must operate as far as it can, and it will not be held invalid on the objection of a party whose interests are not affected by it in a manner which the constitution forbids. If there are any exceptions to this rule, they must be of cases only where it is evident, from a contemplation of the statute and of the purpose to be accomplished by it, that it would not have been passed at all, except as an entirety, and that the general pur-

[50] See *Bank of Hamilton* v. *Dudley*, 2 Pet. 492, 526; *Sturges* v. *Crowninshield*, 4 Wheat., 122, 208; *City of New York* v. *Miln*, 11 Pet. 102, 142; *The State Freight Tax Case*, 15 Wall. 232, 282; *Supervisors* v. *Stanley*, 105 U. S. 305, 311; *Field* v. *Clark*, 143 U. S. 649, 695; *Reagan* v. *Farmers' Loan & Trust Co.*, 154 U. S. 362, 394–395; *Loeb* v. *Columbia Township Trustees*, 179 U. S. 472, 489; *Glenn* v. *Humphreys*, 10 Fed. Cas. No. 5,480 at 472 (C. C. E. D. Pa.); *Wellington, petitioner*, 16 Pick. 87, 96 (Mass.); *Commonwealth* v. *Kimball*, 24 Pick. 359, 362 (Mass.); *Norris* v. *City of Boston*, 4 Met. 282 (Mass.); *Mundy* v. *Monroe*, 1 Mich. 68, 76; *Mayor of Savannah* v. *State*, 4 Ga. 26, 38; *State* v. *Snow*, 3 R. I. 64, 70; *Fisher* v. *McGirr*, 1 Gray 1 (Mass.); *People* v. *Hill*, 7 Cal. 97, 103; *Santo* v. *Iowa*, 2 Iowa 165, 205; *Campbell* v. *Mississippi Union Bank*, 7 Miss. 625, 676–678; *Exchange Bank of Columbus* v. *Hines*, 3 Ohio St. 1; *Commonwealth* v. *Hitchings*, 5 Gray 482 (Mass.).

> pose of the legislature will be defeated if it shall be held valid as to some cases and void as to others.

And the many cases cited in note 45, *supra*, pp. 143–144, show that no such presumption was applied before *Williams* v. *Standard Oil Co.* In these cases the Court assumed that statutes were separable and that valid parts should stand unless the opposite was clearly shown. This attitude would clearly seem to be the proper one; the courts should attempt to effectuate rather than to thwart legislative policies. The presumption of inseparability in the absence of a specific clause pointing in the contrary direction is indeed hardly compatible with the principles that a statute is to be presumed to be constitutional and to be given a constitutional construction where necessary to sustain its validity.

We submit that for questions of separability, as well as for other issues of statutory construction, the proper approach is through the normal canon of interpretation that a law should be construed to be valid insofar as possible. This, we believe, conforms to the normal intention of the legislature. The dicta in *Williams* v. *Standard Oil Co.* to the contrary should not be followed.

C. *"Thornhill* v. *Alabama" is not applicable*

Appellee relies on the statement in *Thornhill* v. *Alabama*, 310 U. S. 88, 98:

> * * * Where regulations of the liberty of free discussion are concerned, there are

> special reasons for observing the rule that it is the statute, and not the accusation or the evidence under it, which prescribes the limits of permissible conduct and warns against transgression. *Stromberg* v. *California*, 283 U. S. 359, 368; *Schneider* v. *State*, 308 U. S. 147, 155, 162–163. Compare *Lanzetta* v. *New Jersey*, 306 U. S. 451.

But the *Thornhill* case involved a statute "baldly prohibiting all picketing", "an unlimited ban on free communication". See *Milk Wagon Drivers Union* v. *Meadowmoor Dairies, Inc.*, 312 U. S. 287, 297. The criminal complaint, as the Court noted, was "framed in the words of the statute" (p. 96). The Court analogized such a law prohibiting a method of speech generally to statutes "purporting to license the dissemination of ideas" (p. 97), which were void on their face apart from any application "by reason of the threat to censure comments on matters of public concern" (*ibid.*). The opinion then states (*ibid.*):

> * * * A like threat is inherent in a penal statute, like that in question here, *which does not aim specifically at evils within the allowable area of state control* but, on the contrary, sweeps within its ambit other activities that in ordinary circumstances constitute an exercise of freedom of speech or of the press. [Italics supplied.]

This passage, which appellee has emphasized (reply brief, p. 10), shows that the Court was con-

cerned with a statute directed at restraining the freedoms protected by the First Amendment, such as the laws in the *Thornhill* case and the cases cited therein, not statutes "aim[ed] specifically at evils within the allowable area of state control." Cf. *Milk Wagon Drivers' Union* v. *Meadowmoor Dairies, Inc., supra.*

Section 566 is not a limitation on freedom of speech or the press or a regulation of the "liberty of free discussion." It reaches only coercion by any means when directed at particular objectives, an evil clearly within the allowable area of Government control, just as the National Labor Relations Act prohibits coercion or interference by employers with the bargaining rights of employees. The former is no more unconstitutional *in toto* because conceivably (though not concededly) some means of coercion might be regarded as protected by the First Amendment than is the latter.

In its subsequent decision in *Jones* v. *Opelika*, 316 U. S. 584, the Court upheld the imposition of license taxes on the vending of religious literature, without passing on the validity of the revocation provision of the statute, saying (p. 599):

> From what has been said previously, it follows that the objection to the unconstitutionality of requiring a license fails. There is no occasion, at this time, to pass on the validity of the revocation section, as it does not affect his present defense.

The opinion had earlier declared (316 U. S. at 596), in distinguishing *Schneider* v. *State* and *Lovell* v. *Griffin*:

> There is to be noted, too, a distinction between nondiscriminatory regulation of operations which are incidental to the exercise of religion or the freedom of speech or the press and those which are imposed upon the religious rite itself or the unmixed dissemination of information.

These passages from the *Opelika* opinion indicate the difference between the law involved in the *Thornhill* case and the Lea Act. The former was a direct regulation of a form of speech. The latter is a general regulation of other conduct which affects speech only incidentally. The restrictive impact of the statute of the former type upon speech and writing justifies this Court in viewing such laws with special care. But the Lea Act does not fall in that category.

VIII

THE INFORMATION MUST STAND IF ANY ONE OF THE THREE MEANS OF COERCION CHARGED STATES A VALID OFFENSE

This Court need hold that only one of the three means of coercion charged in the information may be constitutionally prohibited in order to warrant denial of appellee's motion to dismiss. The information charges appellee with having attempted to coerce station WAAF (1) by directing and caus-

ing persons to discontinue employment, (2) by directing and causing persons not to accept employment, and (3) by placing and causing a picket to be placed in front of the station's place of business. If the statute may be validly applied to coercion by any of these means, a holding of invalidity as to the others would not vitiate the information. The allegations relating to the other means of committing the offense could then be treated as surplusage and disregarded. See *Ford* v. *United States*, 273 U. S. 593, in which the indictment charged a conspiracy to import intoxicating liquors in violation of the tariff act and a treaty with Great Britain. Although the acts charged were not in violation of the treaty, the Court held that such allegations could properly be rejected as surplusage. See also *Sondericker* v. *United States*, 41 F. 2d 144 (C. C. A. 7), in which the indictment charged the appellee with maintaining a nuisance in that he sold and possessed for sale for beverage purposes, certain intoxicating liquor. The court held that, even if possession for sale did not constitute a means of committing the offense, the indictment was good since proof of sale of liquor on the premises would alone support the conviction. The court there said (p. 146):

> The indictment is not for the act of selling or possessing for sale, but for maintaining a nuisance through the several alleged means. The means are disjunc-

> tively stated in the statute. Any valid one of several means charged will, if proved, sustain the charge and uphold a conviction thereon. * * *

Here the offense is coercion for the purpose of securing the employment of more persons than were actually needed to perform service by any of the three means specified. Hence, if coercion by any of these means may constitutionally be prohibited the information must be sustained.

CONCLUSION

For the above reasons it is respectfully submitted that the judgment of the district court should be reversed.

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Acting Solicitor General.
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Special Assistant to the Attorney General.

APRIL 1947.

APPENDIX A

The Act of April 16, 1946, Pub. No. 344, 79th Cong., 2d Sess., 47 U. S. C. 506, provides as follows:

AN ACT To amend title V of the Communications Act of 1934 so as to prohibit certain coercive practices affecting radio broadcasting.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That title V of the Communications Act of 1934, as amended, is amended by inserting after section 505 thereof the following new section:

"COERCIVE PRACTICES AFFECTING BROADCASTING

"SEC. 506. (a) It shall be unlawful, by the use or express or implied threat of the use of force, violence, intimidation, or duress, or by the use or express or implied threat of the use of other means, to coerce, compel or constrain or attempt to coerce, compel, or constrain a licensee—

"(1) to employ or agree to employ, in connection with the conduct of the broadcasting business of such licensee, any person or persons in excess of the number of employees needed by such licensee to perform actual services; or

"(2) to pay or give or agree to pay or give any money or other thing of value in lieu of giving, or on account of failure

to give, employment to any person or persons, in connection with the conduct of the broadcasting business of such licensee, in excess of the number of employees needed by such licensee to perform actual services; or

"(3) to pay or agree to pay more than once for services performed in connection with the conduct of the broadcasting business of such licensee; or

"(4) to pay or give or agree to pay or give any money or other thing of value for services, in connection with the conduct of the broadcasting business of such licensee, which are not to be performed; or

"(5) to refrain, or agree to refrain, from broadcasting or from permitting the broadcasting of a noncommercial educational or cultural program in connection with which the participants receive no money or other thing of value for their services, other than their actual expenses, and such licensee neither pays nor gives any money or other thing of value for the privilege of broadcasting such program nor receives any money or other thing of value on account of the broadcasting of such program; or

"(6) to refrain, or agree to refrain, from broadcasting or permitting the broadcasting of any radio communication originating outside the United States.

"(b) It shall be unlawful, by the use or express or implied threat of the use of force, violence, intimidation or duress, or by the use or express or implied threat of the use of other means, to coerce, compel or constrain or attempt to coerce, compel or constrain a licensee or any other person—

"(1) to pay or agree to pay any exaction for the privilege of, or on account of, producing, preparing, manufacturing, selling, buying, renting, operating, using, or maintaining recordings, transcriptions, or mechanical, chemical, or electrical reproductions, or any other articles, equipment, machines, or materials, used or intended to be used in broadcasting or in the production, preparation, performance, or presentation of a program or programs for broadcasting; or

"(2) to accede to or impose any restriction upon such production, preparation, manufacture, sale, purchase, rental, operation, use, or maintenance, if such restriction is for the purpose of preventing or limiting the use of such articles, equipment, machines, or materials in broadcasting or in the production, preparation, performance, or presentation of a program or programs for broadcasting; or

"(3) to pay or agree to pay any exaction on account of the broadcasting, by means of recordings or transcriptions, of a program previously broadcast, payment having been made, or agreed to be made, for the services actually rendered in the performance of such program.

"(c) The provisions of subsection (a) or (b) of this section shall not be held to make unlawful the enforcement or attempted enforcement, by means lawfully employed, of any contract right heretofore or hereafter existing or of any legal obligation heretofore or hereafter incurred or assumed.

"(d) Whoever wilfully violates any provision of subsection (a) or (b) of this section shall, upon conviction thereof, be

punished by imprisonment for not more than one year or by a fine of not more than $1,000, or both.

"(e) As used in this section the term 'licensee' includes the owner or owners, and the person or persons having control or management, of the radio station in respect of which a station license was granted."

Approved April 16, 1946.

APPENDIX B

79TH CONGRESS, 2d Session | HOUSE OF REPRESENTATIVES | REPORT No. 1508

PROHIBITING CERTAIN COERCIVE PRACTICES AFFECTING RADIO BROADCASTING

January 29, 1946.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. LEA, from the Committee on Interstate and Foreign Commerce, submitted the following

REPORT

[To accompany H. R. 5117]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (H. R. 5117) to amend title V of the Communications Act of 1934 so as to prohibit certain coercive practices affecting radio broadcasting, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Page 4, in lines 15 to 18, inclusive, strike out—

> shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not more than two years or by a fine of not more than $5,000—

and insert in lieu thereof—

> shall, upon conviction thereof, be punished by imprisonment for not more than one year or by a fine of not more than $1,000.

GENERAL STATEMENT

For some years the radio broadcasters of the Nation have been harassed by ever-increasing extortionate and racketeering demands to which they have been forced to yield by coercive methods. The tributes thus exacted are now measured by millions of dollars.

These exactions have not been in compensation for services performed for the broadcasters or in settlement of any obligations due from them. They have not been made for the enforcement of any rights due those who demanded them.

The object of this proposed legislation is to put an end to these exactions for the protection of the broadcasting industry and for the integrity of the Nation.

EVILS AT WHICH DIRECTED

Broadcasting has become one of the great industries of our time. It is now one of the chief means of communication of our Nation. It is one of our greatest implements for free speech. It promptly carries news to the remotest sections of the country. It is a forum for the discussion of our political, economic, and social problems. It is a source of information, education, entertainment, music, culture, and a vehicle for the messages of all religions, utilized by practically every home in the Nation.

In recent years the broadcasting industry has been subjected to extortionate demands enforced by coercive methods which increasingly threaten to restrict and handicap it in performing its rightful functions to the Nation.

Those making these demands, empowered by organized groups, not only have exacted tributes from the broadcasters but have assumed and exerted the power to say what shall and shall not be communicated over the radio. True, they have limited their dominations and demands to purposes which serve their particular groups, but nevertheless they have set a pattern for a like power of private control exerted for mercenary purposes over other phases of the broadcasting industry of the Nation. The same power exercised for other purposes, if permitted, might make the right of free speech only a name and establish censorship of broadcasting for private gain.

Those who make these demands subordinate the rights of the people of the Nation to an untrammeled broadcasting service to their own mercenary purposes. They in effect say to the broadcasters, and say to the makers of recordings, "You must pay this tribute or we will not permit you to give this service to the Nation." An effective power behind the threat is the boycott and strike.

AMERICAN FEDERATION OF MUSICIANS

The make-up and operation of the American Federation of Musicians scarcely justifies its classification as a labor union. Applicants for membership are received without conforming to any qualification of a musician. Only about one-third of them make their living primarily by musical service. The voting privileges of members are so allocated as to permit a minority domination through grossly unequal allotment of voting power.

In most cases demands of the character dealt with by this proposed legislation have been made on behalf of the American Federation of Musicians by James C. Petrillo, its president.

The bylaws of the American Federation of Musicians empower its president to promulgate and issue executive orders—

> which shall be conclusive and binding upon all members and/or locals; any such order may by its terms (*a*) enforce the constitution, bylaws, standing resolutions or other laws, resolutions or rules of the federation; or (*b*) may annul and set aside same or any portion thereof, except such which treat with the finances of the organization, and substitute therefor other and different provisions of his own making.

The federation thus composed is so organized that its membership has little control over its management or policy.

COERCIVE PRACTICES

The local broadcasters of the Nation are greatly dependent on the networks for rounding out their programs. This situation has augmented the coercive power of the Federation of Musicians in forcing compliance with its demands. Through coercive efforts, including boycotts and strikes and threats of boycotts and strikes against broadcasters, the networks and those who furnish materials for broadcasters, the industry has been forced to comply rather than suffer the penalizations that would follow a refusal to submit to these extortionate demands.

Among other things, the following demands upon the broadcasting industry have thus been

made in recent years: That broadcasters employ persons in excess of the number wanted; that in lieu of failure to employ such persons the broadcaster should pay to the federation sums of money equivalent to or greater than funds required for the employment of members of the federation; that payments for services already performed and fully paid for should be repeated; that payments should be made for services not performed; that broadcasters should refrain from broadcasting noncompensated, noncommercial educational or cultural programs; that broadcasters should refrain from broadcasting musical programs of foreign origin; that tributes should be paid for using recordings, transcriptions, and other materials used for broadcasting; that restrictions should be placed on the manufacture and use of recordings or transcriptions for the purpose of restricting or preventing the use of such materials for broadcasting; that tributes should be paid for recordings previously paid for; that dual orchestras should be employed for a single broadcast over two or more outlets; that over 400 small broadcast stations in the country having no live orchestras would be compelled to employ such orchestras; that the use of voluntary noncompensated orchestras be barred from broadcasts unless an orchestra of the Federation of Musicians were also employed or that the union was paid an equivalent or greater amount than the regular charge for a federation orchestra.

Some of these demands began several years ago but in recent years they have become more frequent and for enlarged purposes and amounts. These boycotts and strikes and threats have co-

erced compliance with a number of these demands, with pending demands now being greater than ever before. The amount of money extorted from the broadcasting industry by these methods, without moral right, has reached millions of dollars in amount and if demands now pending were granted it would, by these racketeering and extortion methods, require the broadcasting industry to pay tribute probably much in excess of $20,000,000 a year for peace against these boycotts, strikes, and threats.

The broadcasting industry has been surrendering to these demands for tribute to avoid the greater losses that would result from failure to comply.

MORAL QUALITY OF PRACTICES JUSTIFIES PENALIZATION

Under the terms of this bill certain specified types of coercive practices and demands are made unlawful. These prohibited practices are made misdemeanors and punishable as such.

The practices thus made unlawful are those directly affecting the broadcasting industry. By specific provisions of the bill it is not to be held to make unlawful the enforcement or attempted enforcement, by means lawfully employed, of any contract right or legal obligation.

The perpetration of the offenses penalized by this bill involve moral turpitude akin to that of larceny, embezzlement, the acquisition of another's property by false pretenses, racketeering, and extortion. They are not within the legitimate activities of any organized association of in-

dividuals for the cooperative purpose of their accomplishment.

The right to strike for a lawful purpose cannot be twisted into a right to combine together to commit crimes.

The moral quality of the offenses defined in the bill fully justifies their penalization.

These extortionate exactions from the broadcasting industry have been and are being accomplished by means of threats, intimidation, and coercive power of boycotts and strikes and threats of boycotts and strikes.

The practices proposed to be prohibited by this legislation are to prevent only the unlawful acts as defined in this bill. A strike is a privilege or right exercised for lawful purposes. The law does not contemplate that strikes shall be used as a cloak for the commission of crimes. The provisions of this bill define these unlawful practices and penalize their perpetration.

The restrictions imposed are not a limitation upon the legitimate activities of any association or combination of individuals. There is no more sanctity in crime committed by a combination of individuals than by an individual perpetrator.

POWER AND DUTY OF CONGRESS

Congress clearly has the power and the duty of protecting the public against such exactions.

The greatest exponent of Anglo-Saxon law declared that a law is a rule of conduct prescribed by the supreme power in the state commanding what is right and prohibiting what is wrong. The first fundamental under this approach is as to

whether or not the act to be prohibited is wrong. In view of the record that has been made the answer to that question cannot be one of doubt. Conceding these practices are of such moral quality as to deserve condemnation as unlawful, the right and duty of Congress to suppress them are equally clear.

This bill provides no unjust limitation on the right to strike. The law recognizes the right to strike for lawful purposes and in a lawful manner. The right to strike should be exercised as other rights of the citizen. We have the right of free speech but that is not a justification for slander. We have the right to bear arms but that is not a justification of murder. Any persons may properly organize for lawful purposes but criminal purposes are beyond their legitimate function.

A DISSERVICE TO LABOR

The offenses committed in the name of the American Federation of Musicians are a great disservice to legitimate labor organizations as well as to the public.

The situation presented by this legislation should call for the support of all branches of organized labor to give their condemnation to such outrageous practices committed in the name of labor. Legitimate labor organizations cannot afford to give their condonation to such practices or approve of them by assuming their defense.

It is incredible to believe that in the long run such practices as those hereby inhibited can redound to the credit or advantage of any organization which yields itself to these sordid methods.

A TYPICAL APPROACH

A characteristic assumption of those who make these demands is carried in a wire from Mr. Petrillo to the networks in October 1945, as follows:

> This is to advise you that after the meeting between your company and the American Federation of Musicians held in my office the matter was further discussed and we came to the final conclusion that beginning Monday, October 29, 1945, wherever musicians play for FM broadcasting and AM broadcasting simultaneously the same number of men must be employed for FM broadcasting as are employed for AM broadcasting, which means a double crew must be employed. Kindly govern yourself accordingly.

The absurdity of such a demand is apparent. Two orchestras required for simultaneous broadcast would be an anomaly. It is reported that 1 of the networks has a staff orchestra of 95 pieces and compliance with this order would require the employment of 190 musicians to needlessly duplicate and embarrass the work of one orchestra.

A circumstance that gave impetus to this legislation was an edict directed at a music school in Michigan, which prohibited a broadcast by a school orchestra unless a tribute of three times the usual price of an orchestra of the federation was paid for that privilege. The Vandenberg bill which passed the Senate and the Dondero bill introduced in the House were outgrowths of that circumstance.

CONCLUSION

The coercive character of the methods followed in the name of the American Federation of Musicians is attested by the indisputable fact of the millions of dollars mulcted from the broadcasting industry in recent years. Time after time broadcasters have paid tribute, and otherwise acceded, to these extortionate demands rather than suffer the greater hardships and losses that refusal to comply would involve. These tributes and other exactions were not payments for services or to satisfy an obligation owed to those who demanded them. They were the price paid for the peace of being relieved from the penalties of refusal. As a reward the broadcasting industry has been confronted with more and greater demands of equal viciousness.

It is the responsibility of the Congress to take effective action to stem the rising tide of unconscionable demands upon the broadcasting industry, against which, in the present state of the law, that industry is powerless to defend itself. To the end of meeting that responsibility, prompt enactment into law of the bill here reported is strongly recommended.

EXPLANATION OF THE PROVISIONS OF THE BILL BY SUBSECTIONS

The bill proposes to add to title V of the Communications Act of 1934 a new section 506, containing subsections (a) to (e), inclusive.

SUBSECTION (A)

This subsection makes it unlawful to coerce, compel, or constrain (or to attempt to coerce, com-

pel, or constrain) any radio-station licensee to do any one or more of the things specified in paragraphs (1) to (6), inclusive, of the subsection, whether such actual or attempted coercion, compulsion, or constraint is exerted by the use, or threat of the use, of force, violence, intimidation, or duress, or whether it is exerted by the use, or threat of the use, of any other means (whether or not of the same character as force, violence, intimidation, or duress).

It has been necessary to use the broad language "or by the use or express or implied threat of the use of other means" in order to make the legislation effective. It was necessary to use language broad enough to embrace actual or threatened boycotts and actual or threatened strikes, because these, as well as action or threatened action of like character, could well be among the means by which the coercion, compulsion, or constraint prohibited by the bill may be accomplished or attempted to be accomplished. If the language were not this broad the legislation would fail to accomplish its purpose.

This subsection does not prohibit the right to strike or to withhold services, or force individuals to work against their will or desire. It will place no limitation whatever on the use of strikes for the accomplishment of legitimate objectives, such as wage increases or better working conditions. The subsection does not prohibit strikes *as such*. What it does do is to prohibit the accomplishment, by actual or attempted coercion, compulsion, or constraint, of certain unconscionable and wrong-

ful objectives, regardless of the means used. A strike or threat of a strike is one method by which it is possible to exert or attempt to exert such coercion, compulsion or constraint, and, if it is the method used, the wrongful character of the offense is the same as though other means had been used.

The acts or things specified in paragraphs (1) to (6), inclusive, which it is made unlawful to coerce, compel or constrain, or attempt to coerce, compel or constrain, a licensee to do, are as follows:

> (1) To employ or agree to employ, in connection with the conduct of the broadcasting business of such licensee, any person or persons in excess of the number of employees wanted by such licensee; or
>
> (2) To pay or give or agree to pay or give any money or other thing of value in lieu of giving, or on account of failure to give, employment to any person or persons, in connection with the conduct of the broadcasting business of such licensee, in excess of the number of employees wanted by such licensee; or
>
> (3) To pay or agree to pay more than once for services performed in connection with the conduct of the broadcasting business of such licensee; or
>
> (4) To pay or give or agree to pay or give any money or other thing of value for services, in connection with the conduct of the broadcasting business of such licensee, which are not to be performed; or
>
> (5) To refrain, or agree to refrain, from broadcasting or from permitting the broad-

casting of a noncommercial educational or cultural program in connection with which the participants receive no money or other thing of value for their services, other than their actual expenses, and such licensee neither pays nor gives any money or other thing of value for the privilege of broadcasting such program nor receives any money or other thing of value on account of the broadcasting of such program; or

(6) To refrain, or agree to refrain, from broadcasting or permitting the broadcasting of any radio communication originating outside the United States.

SUBSECTION (B)

This subsection makes it unlawful to coerce, compel, or constrain (or to attempt to coerce, compel or constrain) any radio-station licensee, or any other person, to do any one or more of the things specified in paragraphs (1) to (3), inclusive, of the subsection, whether such actual or attempted coercion, compulsion, or constraint is exerted by the use, or threat of the use, of force, violence, intimidation, or duress, or whether it is exerted by the use, or threat of the use, of any other means (whether or not of the character as force, violence, intimidation, or duress).

It will be noted that subsection (a), discussed above, applies only in the case of actual or attempted coercion, compulsion, or constraint upon a licensee. Because of the nature of the acts or things referred to in paragraphs (1) to (3) inclusive, of this subsection, however it has been necessary to make this subsection applicable to

actual or attempted coercion, compulsion, or constraint upon a licensee or upon any other person, but the acts or things set forth in paragraphs (1) to (3), inclusive, all have a direct relationship to radio broadcasting.

What has been said above in the discussion of subsection (a) with regard to the language "or by the use or express or implied threat of the use of other means" is equally applicable in the case of this subsection.

The things specified in paragraphs (1) to (3), inclusive, of this subsection, which it is made unlawful to coerce, compel, or constrain, or attempt to coerce, compel, or constrain, a licensee or any other person to do, are as follows:

(1) To pay or agree to pay tribute for the privilege of, or on account of, producing, preparing, manufacturing, selling, buying, renting, operating, using, or maintaining recordings, transcriptions, or mechanical, chemical, or electrical reproductions, or any other articles, equipment, machines, or materials, used or intended to be used in broadcasting or in the production, preparation, performance, or presentation of a program or programs for broadcasting; or

(2) To accede to or impose any restriction upon such production, preparation, manufacture, sale, purchase, rental, operation, use, or maintenance, if such restriction is for the purpose of preventing or limiting the use of such articles, equipment, machines, or materials in broadcasting; or

(3) To pay or agree to pay tribute on account of the broadcasting, by means of

recordings or transcriptions, of a program previously broadcast, payment having been made, or agreed to be made, for the services actually rendered in the performance of such program.

SUBSECTION (C)

It is provided by this subsection that the provisions of subsection (a) or (b) shall not be held to make unlawful the enforcement or attempted enforcement, by means lawfully employed, of any contract right or legal obligation.

SUBSECTION (D)

This subsection, as proposed to be amended by the committee, provides that whoever willfully violates any provision of subsection (a) or (b) shall upon conviction thereof be punished by imprisonment for not more than 1 year or by a fine of not more than $1,000, or both, thus making the offense a misdemeanor. In the bill as introduced the offense would have been a felony and punishment would have been by imprisonment for not more than 2 years or by a fine of not more than $5,000, or both.

SUBSECTION (E)

This subsection contains provisions to insure that the term "licensee," as used in the proposed new section 506, includes the owner or owners, and the person or persons having control or management, of the radio station in respect of which a station license has been granted.

CHANGES IN EXISTING LAW

In compliance with paragraph 2a of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as introduced, are shown as follows (new matter is printed in italics, existing law in which no change is proposed is shown in roman):

[Omitted.]

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